The Gazette of India,

EXTRAORDINARY.

Published by Authority.

CALCUTTA, TUESDAY, JANUARY 16, 1872.

FOREIGN DEPARTMENT.

NOTIFICATION.

POLITICAL.

Fort William, the 16th January 1872.

HIS MAJESTY THE KING OF SIAM arrived at Calcutta, and landed at Prinsep's Ghât at 3-30 P.M., on the 13th January 1872.

His Majesty was met at the Sandheads by the Master Attendant of Calcutta.

A Deputation, consisting of the Secretary to Government in the Financial Department; one of the Secretaries to the Bengal Government; Captain Henderson from the Foreign Office, and two Aides-de-Camp of His Excellency's Personal Staff, proceeded down the River, as far as Diamond Harbour, in the Viceroy's State Barge, *Sonamookee*, to convey His Majesty to Calcutta.

On the arrival of the *Sonamookee* off Prinsep's Ghât, the Secretary and Under-Secretary in the Foreign Department, went on board for the purpose of escorting the King to the shore.

On disembarking at Prinsep's Ghât, His Majesty was received by His Honor the Lieutenant-Governor of Bengal, with his Personal Staff, the Brigadier-General Commanding the Presidency Division, and the Brigade Staff.

A Guard of Honor, composed of a Wing of Native Infantry, with Band and Colors, was drawn up in front of Prinsep's Ghât.

A Royal Salute was fired from the ramparts of Fort William as the King of Siam left the *Sonamookee*.

The King of Siam, His retinue, and the British Officers deputed to meet His Majesty, then proceeded in the Viceroy's carriages, escorted by a Squadron of Cavalry, to Government House. A Guard of Honor, consisting of a Wing of

European Infantry, with Band and Colors, was drawn up in front of Government House. The Viceroy's Body Guard lined the Grand Staircase and Marble Hall. The Throne Room was filled with spectators admitted to witness the King's reception.

At the foot of the Grand Staircase of Government House, the King of Siam was met by the Secretaries to the Government of India, who accompanied His Majesty up the steps.

At the top of the Grand Staircase, His Majesty was met by His Excellency the Viceroy and Governor General, attended by the Hon'ble the Chief Justice of Bengal; the Right Revd. the Bishop of Calcutta; the Hon'ble Members of Council; the Private Secretary to the Viceroy, and the remainder of the Personal Staff.

The Viceroy then conducted His Majesty to a Seat on the Dais at the right hand of the Throne, and addressed him with the following words of welcome :—

MAY IT PLEASE YOUR MAJESTY—

"It gives me the greatest gratification to welcome you in the name of my Most Gracious Sovereign the Queen, to the Empire of Hindostan.

"It will be my duty to receive you as a faithful and true ally of Her Majesty, and to offer you all such tokens of hospitality and respect as lie within my power.

"I trust that your Majesty will find here, and during your tour throughout this Great Empire, much to interest you; and that your Majesty's visit will improve and develope those friendly relations, which already exist between the subjects of the Queen, and the many millions of people over whom you exercise your Kingly rule."

After a short conversation, the Siamese Princes, and the King's Ministers and Principal Officers were introduced to the Viceroy by the British Consul at Bangkok; after which the principal officials of the British Administration were presented to the King of Siam by the Viceroy, and by the Foreign Secretary. His Majesty was then conducted to his carriage with the same honors that attended his arrival, and was escorted by the Secretary to Government in the Foreign Department; the Under-Secretary in the Foreign Department; and two of the Viceroy's Aides-de-Camp, accompanied by a detachment of Cavalry, to the residence selected for His Majesty.

A Royal Salute was fired from the ramparts of Fort William as His Majesty left Government House.

On arriving at His Majesty's Residence, the Officers who accompanied him took their leave.

C. U. AITCHISON,
Secy. to the Govt. of India in the Foreign Dept.

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CALCUTTA, TUESDAY, JANUARY 16, 1872.

FOREIGN DEPARTMENT.

NOTIFICATION.

POLITICAL.

Fort William, the 16th January 1872.

On Monday, the 15th of January, His Majesty the King of Siam received His Excellency the Viceroy and Governor-General at his residence, No. 7, Wood Street.

The Viceroy was accompanied by the Lieutenant-Governor of Bengal, with His Honor's Personal Staff; the Hon'ble Members of Council; the Chief Commissioners of the Central Provinces and British Burmah; the Brigadier-General Commanding the Presidency Division, with the Brigade Staff; the Secretaries to Government in the several Departments; His Excellency's Private Secretary; the Under-Secretary in the Foreign Department, and His Excellency's Personal Staff.

A squadron of the Body Guard accompanied the Viceroy.

A Guard of Honor of European Infantry was drawn up at the King's Residence.

A Deputation, consisting of the elder of the King's full brothers, Their Excellencies the Kalahome, and the Kromata, accompanied by Major Sladen, waited on His Excellency the Viceroy, at Government House, at 3-40 P. M.

A Royal Salute was fired from Fort William, as the Cortége left Government House.

The Viceroy was met on alighting by the King, accompanied by the Consul General at Bankok, and was conducted to a seat at the King's right hand. On the Viceroy's right sat the Lieutenant-Governor of Bengal, the Hon'ble Members of Council, and the other British Officers who accompanied His Excellency. On the left of the King sat the Siamese Princes of highest rank, Their Excellencies the Kalahome and the Kromata; the Consul General at

Bankok; Major Sladen; the other Siamese Princes, and the Officers in attendance on the King.

When the Viceroy had taken his seat, the King rose, and addressed His Excellency in the Siamese language in the following words:—

"Your Excellency—allow me to thank you for the honorable reception that has been given to me.

"Ever since I left my own country, I have found myself, when on shore, within the dominions of Her Majesty the Queen of Great Britain and Ireland, and Empress of India. First at Singapore, and afterwards at Penang, Maulmain, Rangoon, and now at Calcutta, I have been received by the authorities and public with the highest honors, and most perfect friendship. For these receptions I have to thank in the first instance Her Gracious Majesty the QUEEN, and secondly THE EARL OF MAYO, the Viceroy who represents Her Majesty's authority, in this magnificent Empire.

"It is my earnest hope that what I have already seen, and what I am about to see, will be of use not only to myself, but also to the people over whom it is my destiny to rule. Be this, however, as it may, of one thing I am certain, namely, that towards Her Majesty, and towards Her Majesty's Viceroy in India, I shall ever entertain feelings of the strongest regard and respect; and I earnestly hope that they will reciprocate those feelings."

A translation of His Majesty's words was then given by the Consul General at Bankok.

To this the Viceroy replied, by an assurance of the pleasure which he should experience in communicating to Her Majesty the QUEEN, the gratification felt by the KING OF SIAM at the manner of His reception in India; and by a renewed expression of His Excellency's hope that the King would derive much pleasure from His visit, in the course of which His Majesty would, His Excellency felt assured, obtain much useful information and add to the number of His many friends.

After a short conversation, the Consul General at Bankok then rose, and presented to the Viceroy one by one the Siamese Princes, Ministers, and Officers in attendance. The Viceroy shook hands with the Princes, and with Their Excellencies the Kalahome and the Kromata.

The same ceremonies which attended the Viceroy's arrival were repeated on His Excellency's departure, and a Royal Salute was again fired.

C. U. AITCHISON,
Secretary to the Government of India.

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CALCUTTA, THURSDAY, MARCH 28, 1872.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th March 1872 :—

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to which the Bill to define and amend the Law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

From Secretary of State for India (Judicial), No. 42, dated 14th September 1866.
Second Report of Her Majesty's Commissioners appointed to prepare a body of Substantive Law for India.
Report on Native papers for the week ending 17th August 1867.
Note by the Assistant Secretary in the Home Department (Legislative) on the Second Report of the Indian Law Commissioners.
From Secretary to Chief Commissioner, British Burma, No. $\frac{2626}{319}$, dated 4th November 1867.
Remarks by Hon'ble Sir W. Morgan, Chief Justice, High Court, North-Western Provinces, on Part IV.
Observations by the Assistant Secretary to Government of Bengal, Legislative Department.
From Under Secretary to Government of Bengal, No. 6680, dated 20th December 1867, and enclosure.
Remarks by John Cochrane, Esq., dated 18th December 1867.
From Under Secretary to Government of Bengal, No. 6759, dated 30th December 1867, and enclosure.
Observations by the Officiating Deputy Commissioner, Delhi, dated 18th December 1867.
Further remarks by John Cochrane, Esq., dated 24th December 1867.
From First Assistant Resident, Haidarábád, No. 45, dated 12th December 1867, and enclosures.
Certain questions by Major General the Hon'ble Sir H. M. Durand, dated 16th December 1867.
Note by C. D. Field, Esq., dated 14th January 1868.
Remarks by Rao Chunna Mull of Delhi, dated 15th January 1868.
Note by Assistant Secretary to Government of India, Home Department (Legislative), dated 24th January 1868.
From Junior Secretary to Government of Bengal, No. 495, dated 28th January 1868, and enclosure.
From Civil and Sessions Judge of Rájsháhi, No. 41, dated 31st January 1868.
From Deputy Commissioner, Lohárdága, No. 1069, dated 7th January 1868.
From Judicial Commissioner, Chota Nágpur, No. 7, dated 31st January 1868.
From Under Secretary to Government of Bombay, No. 328, dated 31st January 1868, and enclosures.
Remarks by Secretary and Treasurer, Bank of Bengal, dated 11th February 1868.
From Secretary of State for India, No. 42, dated 14th September 1866, and enclosures.
From Secretary of State for India, No. 8, dated 8th February 1867, and enclosures.
From Commissioner of Mysor, No. 105-8, dated 2nd April 1868, and enclosures.

2. We have recast Parts I, II and III of the original Bill, composing the first sixty-one sections, and have thrown the provisions which they embodied into a form which appears to us to be simpler and more intelligible. In particular, we have remodelled that portion of the Bill which treats of contracts in general, and which, as it originally stood, was, we thought, somewhat obscurely arranged. The fundamental terms of the subject have also been more precisely defined. The following are the grounds of the alterations which we suggest :—

3. Section 4 of the Bill is in these words—'A contract is an agreement between parties, whereby a party engages to do a thing or engages not to do a thing. A contract may contain several engagements, and they may be either by the same party or by different parties.'

From Secretary to Government, North-Western Provinces, No. 425, dated 18th April 1868, and enclosures.
From J. W. B. Money, Esq., Barrister-at-law, dated 21st May 1868.
From Officiating Magistrate and Collector of Naddea, No. 1688, dated 26th August 1868, and enclosure.
From First Judge, Calcutta Small Cause Court, No. 39, dated 7th September 1868, and enclosures.
From Registrar, High Court, Calcutta, dated 8th September 1868.
Minute by Hon'ble H. S. Maine, dated 11th September 1868.
From Secretary to Government, Panjáb, No. 915, dated 3rd April 1868, and enclosures.
From Chief Secretary to Government, Fort St. George, No. 691, dated 28th April 1868, and enclosures.
From Commissioner of Coorg, No. 81-5, dated 29th April 1868.
From Secretary to Government, North-Western Provinces, No. 219, dated 6th May 1868.
From Secretary to Government, Panjáb, No. 616, dated 11th May 1868.
From Under Secretary to Government, Bombay, No. 1478, dated 19th May 1868, and enclosure.
From Under Secretary to Government, Bombay, No. 1505, dated 29th May 1868.
From Secretary to Chief Commissioner, British Burma, No. 171-6, dated 10th June 1868, and enclosure.
From Secretary to Government, Fort St. George, No. 1108, dated 14th July 1868, and enclosures.
From Under Secretary to Government, Bengal, No. 4411, dated 10th August 1868, and enclosures.
From Secretary to Chief Commissioner, Oudh, No. 3782, dated 7th September 1868, and enclosures.
From Secretary to Chief Commissioner, Oudh, No. 3903, dated 14th September 1868.
From Assistant Secretary to Chief Commissioner, Central Provinces, No. $\frac{2002}{2196}$, dated 16th September 1868, and enclosures.
From Secretary to Government, Panjáb, No. 1567, dated 3rd December 1868.
Despatch from the Right Hon'ble the Secretary of State for India, No. 7, dated 18th March 1869.
Despatch from the Right Hon'ble the Secretary of State for India, No. 8, dated 18th March 1869.
Note by Hon'ble J. F. Stephen, dated 6th February 1870.
Despatch from the Right Hon'ble the Secretary of State for India, No. 47, dated 24th November 1870.
Notes by the Hon'ble Members on Secretary of State's despatch, No. 47, dated 24th November 1870.
Despatch from the Right Hon'ble the Secretary of State for India, No. 11, dated 23rd February 1871.
From P. W. Department, No. 1809R, dated 25th September 1871, forwarding letter from Secretary to Government, Panjáb, P. W. Department, Railway Branch, No. 3078G, dated 9th September 1871, and enclosures.
Note by Hon'ble J. F. Stephen, dated 29th October 1871.
From P. W. Department, No. 167 G. R, dated 31st January 1872.
From Financial Department, No. 1338, dated 23rd February 1872, and enclosure.
From Secretary to Government, Bombay, No. 1257, dated 18th March 1872.

Throughout the Bill, the expressions 'agreement,' 'contract,' 'binding agreement,' 'engagement' and 'engagement by contract' are used indiscriminately. This wording appeared to us to be wanting in precision, and we have endeavoured to place the subject in a clearer light by a definition of contract, which is based on the following theory: The first step towards a contract is a proposal. If the proposal is accepted, it becomes a promise. Where two men agree, either by proposal and acceptance of a promise, or by entering into reciprocal promises, there is an agreement; and, if the agreement is not purely gratuitous, that which causes it is its consideration. These terms proposal, promise, agreement, consideration are all in common use, and fitly describe relations which arise between man and man quite independently of law. What difference, then, does the law make? It enforces some agreements, it does not enforce others, and there is a third kind which it enforces at the option of one party to them, but not at the option of other parties. An agreement to commit a crime, an agreement to sell a horse, and an agreement obtained by misrepresentation, are all agreements; but the law will not enforce the first at all; it will enforce the second at the option of either party, and the third at the option of one party, but not of the other. All agreements may be put into one or other of these three classes; those which cannot be enforced at all we have called void agreements; those which can be enforced by any of the parties we have called contracts; and those which can be enforced at the option of one party only, we have called voidable contracts.

4. In some cases, a contract which, when made, is enforceable, ceases to be enforceable owing to subsequent occurrences, as, for instance, when a person contracts to paint a picture, and dies before he can complete it. In this case the contract becomes void.

5. By defining these fundamental terms, we think that the Act is made much clearer throughout, and, in particular, it becomes easy to arrange it in a systematic way.

6. The first point to be dealt with is, obviously, the law as to proposals, which are the first step towards a contract. Accordingly, chapter I of the draft deals with the communication, acceptance, and revocation of proposals. Its provisions do not differ very materially from sections 6 and 7 of the Bill, but they are adapted to some extent from the New York Civil Code.

7. Sections 6, 8, 9, 10 and 11 in the Bill treat of the validity of contracts under certain circumstances; but it seemed to us that they are not so drawn as to convey readily to the mind of a student the general theory on which they rest. They correspond to chapter II (sections 10-30) of the present draft, which embodies them all, with the addition of a few sections suggested by, or adapted from, the New York Code. The theory on which the whole subject depends is contained in section 10 of the present draft, which explains the rest. 'All agreements are contracts, if they are made by the free consent of parties competent to contract, for a lawful consideration, and with a lawful object, and are not hereby expressly declared to be void.' Each member of this proposition is then separately explained. Section 11 defines who are 'competent persons,' and section 12 defines 'soundness of mind,' which is an element of competency; section 13 defines 'consent'; section 14 specifies the five causes—namely, coercion,

undue influence, fraud, misrepresentation and mistake—which may interfere with the freedom of consent; section 15 defines 'coercion'; section 16 defines 'undue influence'; section 17 defines 'fraud'; section 18 defines 'misrepresentation'; section 19 describes the effect upon an agreement of coercion, undue influence, fraud, and misrepresentation; and sections 20 and 22 deal with the effects of mistakes in fact and law.

8. These sections together give, broadly and fully, the meaning of a valid contract and of the nature of the elements of which it is composed. The following sections, 24-30, declare what agreements are void. These matters in the original draft are mixed up indiscriminately with its other provisions. Thus, agreements void for uncertainty are dealt with in section 12, between the subject of mistake and that of consideration. It is not expressly said, but only implied (section 13), that an unlawful agreement is void, and section 13 is somewhat clumsy. Nothing is said as to agreements in restraint of marriage or trade, or as to wagers, or as to agreements not to sue. We have recommended distinct provisions to be made for the effect of an unlawful object or consideration, the absence of consideration, contracts in restraint of marriage or trade, and contracts in restraint of legal proceedings; contracts the meaning of which cannot be ascertained, and contracts by way of wager. As to contracts in restraint of legal proceedings, we have provided, in section 28, that while, on the one hand, a contract, by which a person is restricted absolutely from enforcing his claims in Court, is void; on the other hand, parties may agree that, in the event of a dispute arising between them in respect to any specified matters, it shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable. We recommend that, when such a contract to refer has been made, it shall be a bar to any action brought in respect of the matters to which it relates, other than an action for the amount awarded in arbitration. This appears to us to embody the results of the latest English decisions, and to be consonant with justice and good sense.

9. Sections 14-17 of the original Bill are replaced by chapter III of the Draft now submitted, headed "Of Contingent Contracts." The original sections appeared to us to mix up two matters which are essentially distinct, namely, (1) agreements contingent upon an event collateral to the agreement—as, if A contracts to pay a sum of money to B, if B lives to be twenty-one. (2) Reciprocal promises—as, if A contracts to pay for a horse, if B delivers it. The result is a good deal of confusion. It is difficult to see why sections 14, 15 and 16 of the Bill are separated by nine other sections from the seven sections which are put under the heading "Of Conditional Contracts." When carefully examined, it will be apparent that the attempt to simplify by neglecting the distinction to which we have referred has caused this, and that the result is to make a clear subject obscure. It also introduces, we think, positive error. Thus, sections 26 and 27, taken together, provide that 'an engagement by contract may be made with the condition superadded that it shall be terminated in case a specified uncertain event shall happen;' and that, 'if at the time of the contract the event is repugnant to law or morality,' the condition is invalid. Suppose a man engages, by contract, to carry goods safely unless they are taken from him by thieves or robbers, the contract is clearly good; yet, under the terms of these sections, the condition would be void. This arises from the neglect to distinguish between conditions independent of a contract, and conditions which form a part of the contract. It is surely one thing to contract to indemnify a man if some one else robs him, and another to contract to indemnify him if he robs some one else. Each contract contemplates the commission of a crime; but the first regards it simply as a possible contingency, the second involves a promise to commit it. Besides this, it is extremely difficult to make any clear distinction, if the arrangement of the Bill is maintained, between the provisions of sections 26 and 27, referred to above, and those of section 13, which relates to consideration. According to section 13, it is essential to the validity of a contract that there should be a good consideration, and lawfulness is essential to the goodness of a consideration. By section 14, a condition may be something which constitutes the consideration; by sections 26 and 27 the condition 'must not be repugnant to law.' If the condition is part of the consideration, sections 26 and 27 re-enact, in a somewhat obscure and disjointed way, what is enacted much more clearly by section 13.

10. The present draft is intended to avoid this by separating three cases—

1. The consideration for the contract. This is provided for in sections 24 and 25.

2. The case of agreements made contingently upon some event independent of them. This is provided for in chapter III, sections 31-36.

3. The effect which the relation between reciprocal promises has on the order in which they are to be performed. This is provided for in sections 51 to 58, which form one of the sub-divisions of chapter IV "Of the Performance of Contracts."

11. No doubt the word 'condition,' or 'conditional,' might be applied in a popular way to each of these three matters. If A's promise is the consideration of B's; or if A makes a promise to B contingently on C's death; or if the intention is to say that, if A promises to pay for B's horse on delivery, A need not pay unless and until B is ready to deliver—it might be said that the consideration of A's promise in the first case, C's death in the second case, and B's readiness to deliver the horse in the third case, were respectively the *conditions* of A's promise, or that A's promise was *conditional* upon them; but we think that, if the sections to which we have referred (namely, 24 and 25, and 51 to 58 of the draft) are read and compared with the

corresponding sections (13 to 31) in the Bill, it will be found that the distribution of the subject under the three heads now suggested makes it much clearer.

12. Section 32 of the original Bill has been omitted. Its substance is disposed of in the Evidence Act.

13. The sections in the Bill (33 to 51 inclusive) relating to Performance of Contracts are not arranged upon any particular principle, though they appear sound in substance. We propose to arrange them as follows:—

Contracts which must be performed:
By whom contracts must be performed:
Time and place for performance:
Order of performance of reciprocal promises:
Appropriation of payments:
Contracts which need not be performed.

14. These headings appear to place the subject in its natural order, which is not the case with the original Bill. The arrangement there adopted is such, that the general principle that each party to a contract must perform his own part in it, unless he is in some way excused from doing so, is nowhere plainly laid down. The first section (33), which relates to the subject, lays down a principle of no great or general importance, namely, that a man may, in certain cases, perform a contract vicariously; so, too, the draft Bill puts the subject of Tender (sections 45, 46) at the very end of the chapter. It ought, in our opinion, to come at the beginning, as a qualification upon the general rule that contracts must be performed. We have accordingly placed it there (see sections 37, 38). As to the question by whom contracts should be performed, the original Bill is arranged in a rather confused way. In sections 33 and 34 it provides for two unimportant matters about delegating the performance of a contract, and accepting performance by a third person. It then goes on (sections 35, 36), to a most important matter—dispensation from an old contract and the substitution of one contract for another; and, after an interval of ten sections, it provides for the devolution of liabilities on the representatives of contractors (sections 47-50). It appears to us that sections 35 and 36 fall properly under the head of 'Contracts which need not be performed;' and sections 47 to 50 under the head of 'Persons by whom Contracts must be performed.'

15. Part III of the Bill relates to what are commonly called quasi-contracts. As to this we have omitted sections 54 and 55. The Law of Evidence provides, to a large extent, for the cases referred to in section 54, by the rule that one party to a contract is precluded from setting up a state of facts other than that which he caused or intentionally allowed the other party to believe to exist. Section 55 seems to us to belong more properly to the law of torts. Illustration (*c*), especially, is a pure case of an action for misrepresentation, and the mode of computing the damage which the misrepresentation has occasioned.

16. We have omitted all reference to special branches of the law of contract, which, at present, are regulated either by express legislation or recognized custom, *e. g.*, the law of Shipping, of Bills of Exchange, Insurance, Master and Servant, Carriers, &c. This omission renders the present Bill so far incomplete; but we consider this incompleteness a less evil than the inconvenience of dealing with so many varied and intricate subjects in a single enactment. It will be easy at a future period, when the present Bill has been for a time in operation, and its results have been practically tested, to deal with all or any of the subjects above referred to, and to add them as a new chapter to the Act. With this view leave has already been asked to introduce a Bill to amend and consolidate the law relating to Carriers, and it would no doubt be desirable that the law of master and servant should at an early date be put into a clearer form than that in which it is at present. No sufficient information has at present been collected to render legislation on this subject safe.

17. As to the question of title in the vendor, the original Bill provided that a *bonâ fide* purchase from the person in possession of goods should have the effect of passing the ownership, provided that the circumstances were not such as to raise a presumption that the vendor had no right to sell. The propriety of this provision was much discussed, and its probable result in facilitating the disposal of stolen property strongly insisted upon. When property has been stolen from its rightful owner, and has found its way into the hands of an innocent purchaser, it is a mere question of expediency as to which of the two shall bear the loss of the transaction. It is difficult to lay down any general rule, grounded on equitable considerations, because the blame, if any, in the transaction may quite as easily attach to one party as the other. The owner may have used every reasonable precaution and the purchaser may have been grossly negligent, or the purchaser may have been cautious and the owner negligent. After much consideration, we have resolved on abandoning the principle laid down in section 75 of the original Bill, and have provided for the subject in section 108 of the draft now submitted. We propose that a seller shall be unable to give a better title to goods than he has himself, except in the following cases, namely:—

1. When the seller is by consent of the owner in possession of a dock-warrant or other document showing title to the goods sold:
2. When the seller is one of several joint owners of the goods sold and in possession of the goods by permission of the other joint owners:

3. When the seller has obtained possession of the goods under a voidable contract and the contract has not been avoided before the sale; provided that the circumstances which render the contract voidable do not amount to an offence.

In each of the above cases, it is necessary that the purchaser should have acted on good faith, and that the circumstances should not have been such as to give him reasonable ground to suspect that the seller had a right to sell.

18. With regard to the distinction between "penalties" and "liquidated damages," we have seen reason to modify the terms of the original section (53). It provides that, "when a contract has been broken, if a sum is named in the contract itself as the amount to be paid in the case of such breach, the amount so named shall be paid accordingly;" in other words, it treats all such sums as if they were liquidated damages, and never regards them as penalties. We are quite conscious that it is highly desirable to simplify the law by removing the distinction between penalties and liquidated damages; but we are clearly of opinion that, under the peculiar circumstances of this country, the best way to do so is to provide that all such sums shall be treated as penalties. It is notoriously the practice of the Natives to introduce heavy penal stipulations into their agreements, and these are always intended to operate simply *in terrorem*. It may, no doubt, be said that, by changing the law, the people might be led in time to a better system. But partly through the tenacity of habit in the Natives, partly through the time which it takes to diffuse acquaintance with a new rule, and partly also through the fact that, in the case of bond-debts, it is the creditor who frames the instrument, there would be a great deal of positive suffering inflicted, and possibly more than the legislature has a right to impose, before the result aimed at by the Bill could be attained. We have accordingly altered the first clause of this section as follows:—

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named."

We have provided, however, that when, by the provisions of any law, a person binds himself under a penalty to perform any condition, he shall be liable to pay the whole of the penalty if he fails to perform the condition. This is intended to provide for the case of recognizances, bail-bonds, and the like.

19. Section 152 of the Bill provides that, "where the bailment is gratuitous, the bailor is entitled at any time, upon reasonable notice, to the restoration of the goods bailed." We have substituted (section 159) the following provision grounded on the New York Code, paragraph 958:—"The lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan, the borrower has acted in such a manner that the return of the thing before the time agreed upon would cause him loss exceeding the benefit derived actually by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived."

20. In section 159 of the Bill we have inserted (section 166) the words "in good faith" before "delivers."

21. Section 161.—After this section we have introduced, from the New York Code, § 943, the following clause (169):—

"When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value; or
(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value."

22. Section 163 of the original Bill provides that, "in the absence of any agreement to the contrary, bankers, factors, and wharfingers have no right to retain any goods bailed to them as a security for a general balance of account." No reason is given for the abolition of the general lien in these cases, and we think it expedient to alter the section (171) thus:—

"Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them, but no other persons have a right to retain as a security for such balance, goods bailed to them unless there is an express contract to that effect."

23. Section 170 of the original Bill provided that "a person who is in possession of goods, or of any bill of lading, dock-warrant, warehousekeeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such

Pledge by possessor of documentary title to goods.

goods, or documents: Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly."

To this we have added (section 178) a proviso which seems to us necessary with a view to discouraging the pledge of stolen property—

"Provided also that such goods or documents have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud."

24. Section 186 of the original Bill forbids an agent to employ another to perform acts which he has undertaken to perform personally. We have added, in section 190 of our draft, the words "unless, by the ordinary custom of trade, a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed."

25. Section 191.—This section of the original Bill provides that an agent, in the absence of his principal's directions, is bound to conduct his business according to the custom which prevails in doing business of the same kind. We have added, in section 211 of our draft, the words "at the place where the agent conducts such business" [*Ireland* v. *Livingtson*, 2. L. R. Q. B. 107, per Shee, J.]

We have provided in section 217 that "an agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent."

26. Section 201 of the original Bill provides that "gross" misconduct in the business of an agency shall disentitle the agent to remuneration in respect of the matter misconducted. The illustrations, however, are not of gross misconduct, and we think that any misconduct should disentitle him. We have omitted the epithet 'gross,' and, in illustration (*a*), we have changed 'insufficient' into 'bad.'

27. Section 202.—This section of the original Bill declares the agent's lien on "goods, papers and other property of the principal." We have, in section 220 of our draft, inserted the words "whether moveable or immoveable," after "property."

28. Section 203 of the original Bill provides that, "where acts are done by one person on behalf of another, *but without his knowledge*, he may elect to ratify or to disown" them. We have inserted, in section 196 of the present Bill, after "knowledge," the words "or authority."

Section 226 of the original Bill we have altered (section 202 of our draft) thus:

29. "Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, *in the absence of an express contract*, be terminated to the prejudice of such interest."

30. Section 262.—We propose to limit the winding-up jurisdiction conferred by section 2 of the original Bill (section 265 of our draft) to "the Court not inferior to the Court of a
26. rict Judge within the local limits of whose jurisdiction the place, or principal place of
Dist. ss of the firm is situate."
busine

We have, in numerous instances throughout the Bill, omitted illustrations, wherever
31. ared to us either to be unnecessary, or too complicated to be readily intelligible, or
they appe ing the result of English decisions, they introduced collateral circumstances and
when, as be her than those which they were intended to illustrate, and were thus liable to be
principles of . except when read in connection with the whole of the surrounding facts.
misunderstood t to these amendments we recommend that the Bill be passed.

32. Subje

J. F. STEPHEN.
J. STRACHEY.
R. TEMPLE.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 12th March 1872.

THE INDIAN CONTRACT BILL.

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SCHEDULE.

THE INDIAN CONTRACT BILL.

As amended by the Select Committee.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

Preamble.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Contract Act, 1872."

Extent. It extends to the whole of British India, and

Commencement. it shall come into force on the first day of September 1872.

Enactments repealed. The enactments mentioned in the schedule hereto are repealed to the extent specified in third column thereof; but nothing herein contained shall affect

the provisions of any Statute, Act, or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation-clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Proposal."

(*a.*)—When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

"Promise."

(*b.*)—When the person, to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

"Promisor" and "Promisee."

(*c.*)—The person making the proposal is called the 'promisor,' and the person accepting the proposal is called the 'promisee.'

"Consideration."

(*d.*)—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

"Agreement."

(*f.*)—Every promise and every set of promises, forming the consideration for each other, is an agreement.

"Reciprocal promises."

Promises which form the consideration or part of the consideration for each other, are called reciprocal promises.

(*g.*)—An agreement not enforceable by law is said to be void.

"Contract."

(*h.*)—An agreement enforceable by law is a contract.

'Voidable contract."

(*i.*)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

Void contract.

(*j.*)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communication, acceptance and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are said to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, revocation or acceptance, or which has the effect of communicating them respectively.

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a.*) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(*b.*) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete, as against A, when the letter is posted; as against B, when the letter is received by A.

(*c.*) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. His revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes by a letter sent by post to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his letter of acceptance at any time before or at the moment when it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

What agreements are contracts.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a.*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b.*) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Consent defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

Free consent defined.

14. Consent is said to be free when it is not caused by—

(1) coercion, as defined in section fifteen, or

(2) undue influence, as defined in section sixteen, or

(3) fraud, as defined in section seventeen, or

(4) misrepresentation, as defined in section eighteen, or

(5) mistake.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Coercion defined.

15. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to intimidation under the Indian Penal Code;

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 508 of the Indian Penal Code was not in force at the time or place where the act was done.

Undue influence defined.

16. Undue influence is said to be employed in the following cases:—

(1.)—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained.

(2.)—When a person whose mind is enfeebled by old age, illness, or mental or bodily distress is so treated as to make him consent to that to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

Illustrations.

(1.) A, a young woman who has resided during her minority in the family of B, her guardian, continues to reside with him after attaining majority, and is induced, by means of his influence, to enter into a contract with him which is disadvantageous to herself. B employs undue influence.

(2.) A, having advanced money to his son, B, during his minority, upon B's coming of age, obtains, by parental influence, a bond from B for a greater amount than the sum due upon the advance. A employs undue influence.

(3.) A is induced, by B's influence over him as his legal adviser, to convey an estate to B for his benefit. B employs undue influence.

(4.) A, a man enfeebled by disease or age, is induced by B's influence over him, as his medical attendant, to agree to pay B an unreasonable sum for his professional assistance during the rest of A's life. B employs undue influence.

Fraud defined.

17. Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1.)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2.)—The active concealment of a fact by one having knowledge or belief of the fact;

(3.)—A promise made without any intention of performing it;

(4.)—Any other act fitted to deceive;

(5.)—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a

contract is not fraud, unless the circumstances of the case are such that under the circumstances of the case, it is the duty of the person keeping silence to speak, or unless his silence in itself is equivalent to speech.

Illustrations.

(*a.*) A and B are in treaty for a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(*b.*) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c.*) B says to A, "If you do not deny it, I shall assume that the horse is sound;" A says nothing. Here A's silence is equivalent to speech.

(*d.*) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

Misrepresentation defined.

18. Misrepresentation means and includes—

(1)—The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing a party to an agreement, however innocently, to make a mistake as to the substance of the thing which is the subject of the agreement.

Agreements caused by fraud or misrepresentation.

19. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

The party whose consent was so caused may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party, whose consent was obtained thereby, had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a.*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b.*) A, by a misrepresentation, leads B to believe erroneously that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c.*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(*d.*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(*e.*) A is entitled to succeed to an estate at the death of B; B dies: C, having received intelligence of B's death, prevents the intelligence reaching A; and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Mistake of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be considered a mistake as to a matter of fact.

Illustrations.

(*a.*) A agrees to sell to B a specific cargo ofgoods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(*b.*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c.*) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Effect of mistakes as to law.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: the contract is voidable.

Mistake of one party not caused by the other.

22. A contract is not voidable because merely it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful and what not.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Illustrations.

(*a.*) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b.*) A promises to pay B 1,000 rupees at the end of six months if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party: and they are lawful considerations.

(*c.*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a

certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(*d.*) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e.*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f.*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g.*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(*h.*) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i.*) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect a purchase by the defaulter and would so defeat the object of the law.

(*j.*) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(*k.*) A engages her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

VOID AGREEMENTS.

Considerations and objects unlawful in part.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Promises without consideration void unless registered, or for certain purposes.

25. An agreement made without consideration is void unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances; or unless—

(2) it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do; or

(3) it is a promise, made in writing and signed by the person to be charged therewith or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation.—Nothing in this section shall affect the validity as between the donor and donee of any gift actually made.

Illustrations.

(*a.*) A promises for no consideration to give to B Rs. 1,000. This is a void agreement.

(*b.*) A puts his promise to give Rs. 1,000 to B into writing, and registers it. This is a contract.

(*c.*) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d.*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e.*) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A verbally promises to pay B Rs. 500 on account of the debt. This is a contract.

Contract in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person other than a minor, is void.

Contract in restraint of trade void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within specified local limits so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception in favour of sale of good-will.

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business, similar to that of the partnership, within such local limits as are referred to in the last exception.

Exception in favour of partnership arrangements.

Exception 3.—Partners may agree that some one or all of them will not carry on any business other than that of the partnership, during the continuance of the partnership.

Restraints upon legal proceedings.

28. Every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute that may arise between them in respect of any specified matters shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the matter so referred.

When such a contract to refer has been made, a suit may be brought for its specific performance, and if a suit other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any matter which they have so agreed to refer, the existence of such contract shall be a bar to the action.

Exception 2.—Nor shall this section render illegal any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen or affect any provision of any law in force for the time being as to references to arbitration.

Certainty of subject.

29. Agreements the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(*a.*) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b.*) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c.*) A, who is a dealer in cocoanut-oil only, agrees to sell to B "one hundred tons of oil." The nature of A's trade

affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d.*) A agrees to sell to B "all the grain in my granary at Ramnagar." There is no uncertainty here to make the agreement void.

(*e.*) A agrees to sell to B one thousand maunds of rice at a price to be fixed by C. As the subject of the agreement is capable of being made certain, there is no uncertainty here to make it void.

(*f.*) A agrees to sell B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

Wagers.

30. Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

CHAPTER III.

Of Contingent Contracts.

Contingent contract defined.

31. A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contingent contracts.

32. Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.

If the event becomes impossible such contracts become void.

Illustrations.

(*a.*) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b.*) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c.*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Contingent contracts on an event which becomes impossible.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When contingency is a living person's future conduct.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when the person does anything which renders it impossible that he should do the thing within any definite time, or otherwise than under further contingencies.

(*a.*) A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

Contingent contracts on an event to happen within a fixed time.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time, become void if, at the expiration of time fixed, the event has not happened, or if, before the time fixed, the event becomes impossible.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time has expired and the event has not happened, or, before the time has expired, if it becomes certain that the event will not happen.

Illustrations.

(*a.*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b.*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Contingent agreements on impossible events.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(*a.*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b.*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

What contracts must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, or make compensation to the promisees for the non-performance of them, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of their death before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a.*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(*b.*) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

38. Where a promisor has made an offer of performance to the promisee and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions :—

1. It must be unconditional.

2. It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound to do by his promise.

3. If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to offer.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse on the 1st March 1872, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Power to terminate contract on refusal of party to perform it wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a.*) A, a singer, enters into an engagement with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night the singer wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b.*) A, a singer, enters into an engagement with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, the singer wilfully absents herself. With the assent of B she sings on the seventh night. B has signified his acquiescence in the continuance of the contract and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

BY WHOM CONTRACTS MUST BE PERFORMED.

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a.*) A promises to pay B a sum of money. He may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b.*) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from a third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of the promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract.

Sharing of loss by default.

If any one of two or more joint promisors makes default in such contribution, the remaining promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section contained shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover any thing from the surety on account of such payments.

Illustrations.

(*a.*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b.*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(*c.*) A, B and C are under a joint promise to pay D 3,000 rupees, C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d.*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Release of one joint contractor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free such joint promisor from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears by the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

TIME AND PLACE FOR PERFORMANCE.

Time for performance of engagement where no time is specified and no application to be made.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question 'What is a reasonable time' is, in each particular case, a question of fact.

Time for performance of engagement where time is specified and no application to be made.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application, he may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it; and they are not received. A has not performed his promise.

Application for performance at a proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question 'What is a proper time and place' is, in each particular case, a question of fact.

Place for performance of engagement where no application to be made and no place fixed.

49. When a promise is to be performed without application, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by person entitled to claim it.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(*a.*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. This is a good payment by B.

(*b.*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c.*) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d.*) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

ORDER OF PERFORMANCE OF RECIPROCAL PROMISES TO BE SIMULTANEOUSLY PERFORMED.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a.*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(*b.*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of different engagements.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(*a.*) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b.*) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss which he may have sustained in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B, and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed, till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may have sustained by the non-performance of the contract.

Illustrations.

(*a.*) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for his failure.

(*b.*) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-execution of the contract.

(*c.*) A contracts with B to deliver to him at a specified price certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed and B must make compensation.

(*d.*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect as to time in contract to do certain things at certain times.

55. When any party to a contract promises to do a certain thing at or before a specified time or certain things at or before specified times, and fails to do them at those times, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to perform at the time agreed, but the promisee is entitled to compensation from the promisor for any loss he may have incurred by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by its non-performance at the proper time, unless, at the time of such acceptance, he gives notice of his intention to do so to the promisee.

56. An agreement to do an act impossible in itself is void.

Promise to do an impossible act or one which afterwards becomes illegal.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Where one person contracts to do something which he knows, or with reasonable diligence might have known, and which the other party to the contract did not know, to be impossible, or unlawful, the person so contracting is bound to make compensation to such other party for any loss which he has sustained by the non-performance of the promise.

Illustrations.

(*a.*) A agrees with B to discover treasure by magic. The agreement is void.

(*b.*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c.*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d.*) A contracts to take in cargo for B at a foreign port. The Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e.*) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions B is too ill to act. The contract to act on those occasions becomes void.

57. If persons reciprocally promise to act in a certain way, and, under specified circumstances, to act in a certain other way, and, if any of the promises to be substituted under those circumstances for the first set of promises are for an unlawful object or consideration, the set of promises to be substituted are a void agreement; but the set of promises for which they are to be substituted may be a contract.

Alternative reciprocal promises one set of which is unlawful.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, form a valid contract.

The second set are for an unlawful object, namely, that B may use the house as a gambling house, and are a void agreement.

58. In the case of an alternative promise one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Reciprocal promises one of which is in the alternative, one branch of the alternative being unlawful.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

APPROPRIATION OF PAYMENTS.

59. Where a man, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Where there are several distinct debts and the debt to which payment is to be applied is indicated.

Illustrations.

(*a.*) A owes B (among other debts) 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b.*) A owes to B (among other debts) the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating, to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the payer, whether its recovery is or is not barred by the law in force for the time being relating to the limitation of suits.

Where there are several distinct debts and the debt to which payment is to be applied is not indicated.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not recoverable under the law relating to the limitation of suits. If they are of equal standing, the payment shall be applied in discharge of each proportionably.

Where neither party makes any appropriation.

CONTRACTS WHICH NEED NOT BE PERFORMED.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Contracts may be rescinded or altered.

Illustrations.

(*a.*) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(*b.*) A owes B 10,000 rupees. A enters into an arrangement with B, and gives him a mortgage of A's estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c.*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with, or remit wholly or in part, the performance of the promise made to him, or may extend the time for it, or may accept instead of it any satisfaction which he thinks fit.

Dispensation with, or remittance of, or acceptance of, satisfaction in lieu of performance.

Illustrations.

(*a.*) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b.*) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c.*) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(*d.*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e.*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Consequences of rescission or alteration.

64. When a person, at whose option a contract is voidable, rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under agreement or contract void or rescinded.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it.

Illustrations.

(*a.*) A pays B 1,000 rupees in consideration of A's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b.*) A contracts with B to deliver to him 250 maunds of rice before the 1st of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(*c.*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d.*) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which he would have made if A had been able to sing, but must refund the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Parties mutually bound to facilitate performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

B is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Supply of necessaries to persons incapable of contracting.

68. If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a.*) A supplies B, a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b.*) A supplies the wife and children of B, a lunatic with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying what another is bound to pay.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal on a lease granted by A, the zemindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Effect of non-gratuitous act of which a person enjoys the benefit.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other enjoys the benefit thereof, the latter is bound to restore, or to make compensation to the former in respect of, the thing so done or delivered.

Illustration.

(*a.*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b.*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid by mistake or coercion.

72. A person to whom money has been paid by mistake, or under coercion, must repay it.

Illustrations.

(*a.*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b.*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF THE BREACH OF CONTRACT AND NON-PERFORMANCE OF OBLIGATIONS.

Party rightfully terminating contract entitled to compensation.

73. A person who rightfully rescinds a contract, is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

(*a.*) A, a singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents himself from the theatre, and B, in consequence, rescinds the contract. A is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

Payment of sum specified to be paid in case of breach.

Payment of compensation.

74. When a contract has been broken, and has not been discharged, the party who suffers by such breach is entitled to receive from the party, who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person, injured by the failure to discharge it, is entitled to receive the same compensation from the party in default as if he had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss, the means which existed of remedying the inconvenience caused by the non-performance of the contract, must be taken into account.

Illustrations.

(*a.*) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b.*) A hires B's ship to go to Bombay and there take on board, on the 1st of January, a cargo (which A is to provide) and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c.*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d.*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(*e.*) A, in November, contracts to buy of B, at a stated price, 100 bales of jute, to be delivered on the 1st of January. On the 15th of December, A gives notice to B that he will not accept the jute. On the 1st January, the jute is tendered to A, who refuses to accept it. A must pay to B, by way of compensation, the excess, if any, of the contract price over the sum which B could obtain for the jute on the 1st of January.

(*f.*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapúr, for sale at that place, starting on a specified day. The boat, owing to some unavoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapúr is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapúr at the time when it would have arrived if forwarded in due course and its market price at the time when it actually arrived.

(*g.*) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*h.*) A contracts to let his ship to B for a year, from the 1st of January, for a certain price. Freights rise, and, on the 1st of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the 1st of January.

(*i.*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(*j.*) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained by not obtaining the Government contract.

(*k.*) A having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and, in consequence, fails to perform his contract with B. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*l.*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and was compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*m.*) A, a builder, contracts to erect and finish a house by the 1st of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the 1st of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of re-building the house, for the rent lost, and for the compensation made.

(*n.*) A sells certain merchandise to B warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*o.*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*p.*) A contracts to deliver 50 maunds of saltpetre to B on the 1st of January, at a certain price. B afterwards, before the 1st of January, contracts to sell the saltpetre to C at a price higher than the market price of the 1st of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the 1st of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*q.*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*r.*) A contracts to sell and deliver to B, on the 1st of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till long after the appointed time, and too late to be used that year in making caps. A is entitled to receive from B, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*s.*) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the 1st of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the 1st of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Title to compensation for breach of contract in which a sum is named as payable in case of breach.

75. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

Explanation.—Where under provisions of any law, any person enters into any bond to perform any condition under a specified penalty, he is liable to pay the full amount of such penalty if he does not perform the condition of the bond.

Illustrations.

(*a.*) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation not exceeding Rs. 1,000 as the Court considers reasonable.

(*b.*) A contracts with B that if A practises as a surgeon within Calcutta he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation not exceeding Rs. 5,000 as the Court considers reasonable.

(*c.*) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

CHAPTER VII.

SALE OF GOODS.

WHEN PROPERTY IN GOODS SOLD PASSES.

'Goods' defined.

76. In this chapter, the word 'goods' means and includes every kind of moveable property.

'Sale' defined.

77. Sale is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

Sale how effected.

78. Sale is effected by offer and acceptance

of ascertained goods for a price,

or of a price for ascertained goods,

together with payment of the price or delivery of the goods, or with tender, part payment, earnest, or part delivery, or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price or when the earnest is paid, or when the whole or part of the goods are delivered.

If the parties agree expressly, or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations.

(*a.*) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(*b.*) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(*c.*) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(*d.*) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(*e.*) B, on the 1st January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

Effect of agreement for sale of thing to be ascertained, made, or finished.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished, the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

Sale of goods which the seller is to put into state in which buyer is to take them.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustrations.

(*a.*) A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

(*b.*) A contracts to build a ship for B for a price, payable by instalments, dependent on the progress of the building of the ship, and the ship is to be built under B's superintendence. The ownership of the materials incorporated with the ship passes to B at the time of incorporation, as this was intended by the parties, but the materials lying in A's yard, though suited and intended for the ship, do not pass to B until they are actually incorporated with the ship.

Sale of goods when seller has to do anything thereto in order to ascertain price.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(*a.*) A, owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(*b.*) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine which his carts must pass over on their way from A's ground to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

Sale when goods are unascertained at date of agreement.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration.

A agrees to sell to B, 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

Ascertainment of goods by subsequent appropriation.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale complete.

Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A and assent by B, the sugar becomes the property of B.

Ascertainment of goods by seller's selection.

84. Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so, the goods are ascertained.

Illustration.

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

Agreement for sale of immoveable and moveable property combined.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer's risk.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations.

(*a.*) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(*b.*) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

Transfer of ownership of goods agreed to be sold while non-existent.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done after the goods are produced, in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Illustrations.

(*a.*) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(*b.*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some corps grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(*c.*) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

Contract to sell and deliver at a future day, goods not in seller's possession at date of contract.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A contracts, on the 1st January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the 1st March of the same year. A, at the time of making the contract is not in possession of any shares. The contract is valid.

Determination of unfixed price.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

DELIVERY.

Delivery how made.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Illustrations.

(*a.*) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(*b.*) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(*c.*) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(*d.*) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(*e.*) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(*f.*) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer-notice to B, and offers to give it him on payment of the bill. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

Effect of delivery to wharfinger or carrier.

91. A delivery to a wharfinger or carrier of the goods sold, has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe delivery of the goods.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

Effect of part-delivery.

92. A delivery of part of goods in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

(*a.*) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(*b.*) A sells to B a stack of fire-wood, to be paid for by bill on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(*c.*) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

Seller not bound to deliver until buyer applies for possession.

93. In the absence of any special promise to the contrary, the seller of goods is not bound to deliver them until the buyer applies for possession.

Place of delivery.

94. In the absence of any promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

SELLER'S LIEN.

Seller's lien.

95. Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.

Lien where payment to be made at a future day, but no time fixed for delivery.

'Insolvency' defined.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B stops payment. A may retain the goods for the price.

Where payment to be made at future day, and buyer allows goods to remain in seller's possession.

97. Where, by the contract the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

Seller's lien against subsequent buyer.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

STOPPAGE IN TRANSIT.

Power to stop in transit.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if buyer becomes insolvent, stop the goods while they are in transit to the buyer.

When goods are to be deemed in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(*a.*) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(*b.*) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puná, orders goods of A at Bombay. A sends them to Puná by C, a carrier appointed by B. The goods arrive at Puná, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

Continuance of right of stoppage.

101. The right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Cessation of right on assignment of bill of lading.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations.

(a.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

Stoppage on payment to pledgee of amount of claim.

103. Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for those goods to C, to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for those goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

Stoppage how effected.

104. The seller may effect stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

Notice of seller's claim.

105. Such notice may be given either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Right of seller on stoppage.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

RE-SALE.

Re-sale on buyer's failure to perform.

107. Where the buyer of goods fails to perform his part of the contract either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, re-sell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such re-sale.

TITLE.

Title conveyed by seller of goods to buyer.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

Exception 1. When any person is, by the consent of the owner in possession of any good or in possession of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to the goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2. If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

Exception 3. When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession, unless the circumstances which render the contract voidable amounted to an offence committed by the seller or the person whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B has stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, intrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not

sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(*c.*) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(*d.*) A, B and C are joint Hindú brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bonâ fide*. The property in the cow is transferred to D.

(*e.*) A, by a misrepresentation not amounting to cheating, persuades B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which D has sustained by being prevented from getting back the horse.

(*f.*) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

WARRANTY.

Seller's responsibility for badness of title.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or person claiming under him, for loss thereby caused, unless a contrary intention appears by the contract.

Implied warranty of goodness or quality.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness on sale of provisions.

111. On the sale of provisions, there is an implied warranty that they are sound.

Warranty on sale of goods by sample.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

Warranty on sale of goods sold as being of a certain denomination.

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(*a.*) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Moorshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(*b.*) A buys, by sample and after having inspected the bulk, 100 bales of "Fair Bengal" Cotton. The cotton proves not to be such as is known in the market as "Fair Bengal": there is a breach of warranty.

Warranty where goods ordered for a specified purpose.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination employed in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

Sale of article of a well-known ascertained kind.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

Non-responsibility for latent defects.

116. In the absence of fraud and of any express warranty of quality, the seller of an article, which answers the description under which it was sold, is not responsible for a latent defect in it.

Illustration.

A sells to B a horse. It turns out that the horse had at the time of the sale a defect of which A was unaware. A is not responsible for this.

Buyer's right on breach of warranty.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A sells to B a horse, warranted sound. The horse proves to have been unsound at the time of sale. B is entitled to compensation from A for loss caused by the unsoundness.

Rejection or return of goods sold with warranty.

118. Where there has been a contract, with a warranty, for the sale of goods, which at the time of the contract were not ascertained, or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them, provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(*a.*) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton, not in accordance with sample, is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(*b.*) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample, and informs A that he means to claim compensation. B afterwards uses two sacks, and sells one. He cannot now repudiate the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(*c.*) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

MISCELLANEOUS.

Refusal to accept when goods not ordered are sent.

119. When the seller sends goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

Effect of wrongful refusal to accept.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Rescission on failure to pay price at time fixed.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Sale of several lots by auction.

122. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Puffers at auction.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

'Indemnity' defined.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.

Illustration.

(*a.*) A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights and liabilities of indemnity-holder when sued.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for him to make in the absence of any contract of indemnity or if the promisor authorized him to compromise the suit.

Definitions of 'guarantee,' 'surety,' 'principal debtor,' and 'creditor.'

126. A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the surety, the person, in respect of whose default the guarantee is given, is called the principal debtor, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

Consideration for guarantee.

127. Anything done or any promise made for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a.*) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(*b.*) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c.*) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

Continuing guarantee.

129. A guarantee which extends to a series of transactions, is called a continuing guarantee.

Illustrations.

(*a.*) A, in consideration that B will employ C in collecting the rents of B's zamindárí, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b.*) A guarantees B, a tea-dealer, to the amount of £100 for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c.*) A guarantees B the price of five sacks of flour to be delivered by B to C payable in one month. B delivers five sacks to C. A pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

130. A continuing guarantee may be at any time revoked, as to future transactions, by the surety, by notice to the creditor.

Illustrations.

(*a.*) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B for twelve months the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(*b.*) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons primarily liable, not affected by a private arrangement as to suretyship.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, but being aware of its existence, the liability of each of the two persons to the third person under the first contract is not affected by the existence of the second contract.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms of contract.

133. Any variance made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(*a.*) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable to one-fourth of the losses on over drafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b.*) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged from future liability under his guarantee by the change, though the misconduct of B is in respect of a duty not affected by the later Act.

(*c.*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for monies received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(*d.*) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(*e.*) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a.*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(*b.*) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c*). A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Agreement to give time to principal debtor made with a third person.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's forbearance to sue.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Release of one co-surety.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free that one from any responsibility to the others.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(*a.*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b.*) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in satisfaction of the monies due on the note. Subsequently C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised and M embezzles. A is not liable to B on his guarantee.

Rights of surety on payment or performance.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c.) A, as surety for B, makes a bond jointly with B to C to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on agreement that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and on A's refusal to pay sues A upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A guarantees to C, to the extent of 2,000 rupees, payment of rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

146. Where two or more persons are co-sureties for the same debt or duty either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable as between themselves to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(a.) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable as between themselves to pay 1,000 rupees each.

(b.) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(a.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, *viz.*, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, *viz.*, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, *viz.*, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. Each has to pay the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

'Bailment,' 'bailor,' and 'bailee' defined.

148. A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering

the goods is called the bailor. The person to whom they are delivered is called the bailee.

Explanation.—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Delivery to bailee how made.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

150. The bailor is bound to disclose to the bailee faults in the goods bailed of which the bailor is aware and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a.*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b.*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Bailee when not liable for loss, etc., of thing bailed.

152. The bailee, in the absence of any contract to the contrary, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of them described in section 151.

Termination of bailment by bailee's act inconsistent with conditions.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B for hire a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee making unauthorized use of goods bailed.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(*a.*) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(*b.*) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

Mixture, with bailor's consent, of his goods with goods of bailee.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Mixture, without bailor's consent, when the goods can be separated.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B without A's consent mixes the 100 bales with other bales of his own bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of bales and any other incidental damage.

Mixture, without bailor's consent, when the goods cannot be separated.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B without A's consent mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Re-payment by bailor of necessary expenses.

158. Where by the conditions of the bailment the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall re-pay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods bailed gratuitously.

159. The lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan, the borrower has acted in such a manner that the return of the thing before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly delivered or tendered.

161. If by the fault of the bailee the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Increase or profit from goods bailed.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailment by several joint owners.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Re-delivery to bailee who has no title.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

If the bailee delivers the goods to a person who is entitled to them as against the bailor, he is not responsible to the bailor for such delivery; but the burden of proving that such person was so entitled to them is upon the bailee.

Right of third person claiming goods bailed.

167. If a third person claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods.

May sue for the amount not to apply to salvage.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he has a right to retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder has a right to sue for such reward and to retain the goods until he receives it.

When finder of thing commonly on sale may sell it.

169. When a thing, which is commonly the subject of sale, is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand to pay the lawful charges of the finder, the finder may sell it—

(1.) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2.) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service, involving the exercise of labour or skill, on the goods bailed, he has, in the absence of a contract to the contrary, a right to retain the goods until he receives remuneration for the services he has rendered in respect of them.

Illustrations.

(*a.*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b.*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

Bankers, factors, wharfingers have no general lien.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

BAILMENTS OF PLEDGES.

'Pledge,' 'pawnor,' and 'pawnee' defined.

172. The bailment of goods as security for payment of a debt or performance of a promise is called pledge. The bailor is in this case called the pawnor. The bailee is called the pawnee.

Pawnee's right of retainer.

173. The pawnee may retain the goods pledged not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

In case of subsequent advances.

174. The pawnee shall not retain the goods pledged for any other debt or promise than the debt or promise for which they are pledged, except by contract between the parties; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Extraordinary expenses incurred by pawnee.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

176. If the pawnor makes default in payment of the debt or performance of the promise in respect of which the goods were pledged, at the stipulated time, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of the sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

177. If a time is stipulated for the payment of the debt or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any time before the actual sale of them, but he must, in that case pay, in addition, any expenses which have arisen from his default.

Pledge by possessor of documentary title to goods.

178. A person who is in possession of goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents: Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud.

Pledge where pledgor has only a limited interest.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

SUITS BY BAILEES OR BAILORS AGAINST WRONGDOERS.

Suits by bailor or bailee against wrongdoers.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of proceeds of such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

APPOINTMENT AND AUTHORITY OF AGENTS.

'Agent' and 'principal' defined.

182. An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.

Who may be a principal.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Agency created without consideration.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be express or implied.

Definitions of expressed and implied authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A, to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority.

188. An agent having an authority to do any act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on any business, has authority to do every lawful thing necessary for the purpose of or usually done in the course of conducting such business.

Illustrations.

(*a.*) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b.*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

Agent's authority in an emergency.

189. An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations.

(*a.*) Agent for sale may have goods repaired.

(*b.*) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey without spoiling.

SUB-AGENTS.

When agent cannot delegate.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed.

'Sub-agent' defined.

191. A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agent. The sub-agent is responsible for his acts to the agent but not to the principal, except in cases of fraud or wilful wrong.

Agent's responsibility for sub-agent.

Sub-agent's responsibility.

Agent's responsibility for sub-agent appointed without authority.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, and the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person to whom agency is duly delegated.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(*a.*) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(*b.*) A authorizes B, a merchant in Calcutta to recover the monies due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty in naming such person.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and if he does this he will not be responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a.*) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(*b.*) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

RATIFICATION.

Effect of ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge, or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a.*) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(*b.*) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person, ratifying any unauthorized act done on his behalf, ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person.

200. An act done by one person on behalf of another without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages or of terminating any right or interest of a third person, cannot by ratification be made to have such effect.

Illustrations.

(*a.*) A, an unauthorized person, requires on account of B, the owner of a chattel, the delivery of the chattel to B. This demand cannot be ratified by B, so as to make the holder liable for damages for default.

(*b.*) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B so as to be binding on A.

REVOCATION OF AUTHORITY.

Termination of agency.

201. An agency is terminated by the principal revoking his authority or by the agent renouncing the business of the agency, or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind: or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Where agency is coupled with an interest.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(*a.*) A gives authority to B to sell A's land, and to pay himself out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b.*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

Revocation of agent's authority.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a.*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's monies remaining in his hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(*b.*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's monies remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation or renunciation.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation, or the damage thereby resulting to the principal or the agent, as the case may be, must be made good to him by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(*a.*) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards by letter revokes his authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b.*) A, at Madras, by letter directs B to sell some cotton lying in a warehouse in Bombay for him, and afterwards by letter revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(*c.*) A directs B, his agent, to pay certain money to C. A dies and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take all reasonable steps for the protection and preservation of the interests entrusted to him on behalf of the representatives of his late principal.

Termination of sub-agent's authority.

210. The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him, subject to the rules herein contained regarding the termination of an agent's authority.

AGENT'S DUTY TO PRINCIPAL.

Agent's duty in conducting principal's business.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues he must account for it.

Illustrations.

(*a.*) A, an agent engaged in carrying on for B a business in which it is the custom to invest from time to time at interest the monies which may be in hand, omits to make such investment. A must make good to the principal the interest usually obtained by such investments.

(*b.*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and diligence required from agent.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(*a.*) A, a merchant in Calcutta, has an agent B in London, to whom a large sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss as, *e. g.*, by variation of rate of exchange, but not further.

(*b.*) A, an agent for the sale of goods, having authority to sell on credit, sells to B, on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c.*) A, an insurance broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d.*) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

214. It is the duty of an agent in cases of difficulty to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Agent dealing on his own account in business of agency without principal's consent.

215. If an agent deals on his own account in the business of the agency without first obtaining the consent of the principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction if the case show either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a.*) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact or that the sale has been disadvantageous to him.

(*b.*) A directs B to sell A's estate. B on looking at the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine.

A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's right of retainer out of sums received on principal's account.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due.

219. In the absence of any contract to the contrary, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Misconduct disentitles agent to remuneration.

220. An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which has been so misconducted.

Illustrations.

(*a.*) A employs B to recover 1,00,000 rupees from C and lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security, which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b.*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's goods and papers.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.

PRINCIPAL'S DUTY TO AGENT.

Agent's indemnity against consequences of lawful acts.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

Illustrations.

(*a.*) B, at Singapore, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(*b.*) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs, and expenses.

Agent's indemnity against consequences of acts done in good faith.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(*a*). A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum he is compelled to pay to C, in consequence of obeying A's directions.

(*b.*) B, at request of A sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

Non-liability of employer of agent to do a criminal act.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

(*a.*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b.*) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make a compensation to B.

EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

Enforcement and consequences of agent's contracts.

226. Contracts entered into through an agent and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a.*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(*b.*) A being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority.

227. When an agent does more than he is authorized to do, and when the part of what he does which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

When excess of agent's authority is not separable.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Consequences of notice given to agent.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(*a.*) A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b.*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce nor be bound by contracts on behalf of principal.

Implication of contract to contrary.

230. In the absence of any contract to the contrary, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases :—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.

(2.) Where the agent does not disclose the name of his principal.

(3.) Where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract, but the other contracting party has the same rights as against the principal as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the engagement, can only obtain it, subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Principal's liability where agent personally liable.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Liability of pretended agent.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his supposed employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent, not entitled to performance.

236. A person, with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting not as agent but on his own account.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

237. When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he had by his words or conduct induced such persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a.*) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b.*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if they had been made or committed by the principals; but misrepresentations made, and frauds committed, by agents, in matters, which do not fall within their authority, do not affect their principals.

Effect on agreement of misrepresentation or fraud by agent.

Illustrations.

(*a*). A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized to make by B. The contract is voidable as between B and C at the option of C.

(*b*). A. the Captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER IX.

OF PARTNERSHIP.

239. Partnership is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

'Partnership' defined.

Persons who have entered into partnership with one another are called collectively a firm.

'Firm' defined.

Illustrations.

(*a.*) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.

(*b.*) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(*c.*) A agrees with B, a goldsmith, to buy and furnish gold to B to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(*d.*) A and B agree to work together as carpenters, but that A shall receive all profits, and shall pay wages to B. A and B are not partners.

(*e.*) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner or render him responsible as such.

Lender not a partner by advancing money for share of profits.

241. In the absence of any contract to the contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section.

Property left in business by retiring partner or deceased partner's representative.

242. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

Contract for servant's remuneration by share of profits.

243. No person being a widow or child of a deceased partner of a trader, and receiving by way of annuity a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Annuity out of profits to widow or child of deceased partner.

244. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

Portion of profits received for sale of good-will.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm is responsible to him as a partner in such firm.

Responsibility of person leading another to believe him a partner.

246. Any one consenting to allow himself to be represented as a partner is liable as such to third persons who, on the faith thereof, give credit to the partnership.

Liability of person permitting himself to be represented as a partner.

247. A person who is under the age of majority, according to the laws to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Minor partner.

248. A person who has been admitted to the benefits of partnership under the age of majority, becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

Liability of minor partner on attaining majority.

249. Every partner is liable for all debts and obligations incurred in the usual course of business by or on behalf of the partnership while he is a partner; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

Partner's liability for debts of partnership.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of co-partner.

251. Each partner who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same

Partner's power to bind co-partners.

extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(*a.*) A, and B trade in partnership—A residing in England and B in India. A draws a bill to exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the fraud.

(*b.*) A, being one of a firm of solicitors and attorneys draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(*c.*) A and B carry on business in partnership as bankers: a sum of money is received by A on behalf of the firm. A does not inform B of such payment, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(*d.*) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

Annulment of contract defining partners' rights and obligations.

252. Where partners have by contract regulated and defined as between themselves their rights and obligations; such contract can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A, B and C intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A, receiving one-half of the net profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

General rule determining partner's mutual relations.

253. In the absence of any contract to the contrary, the relations of the partners to each other are determined by the following rules:—

(1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership.

(3.) Each partner has a right to take part in the management of the partnership business.

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business.

(5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners.

(6.) No person can introduce a new partner into a firm without the consent of all the partners.

(7.) If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members.

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time.

(9.) Where a partnership has been entered into for a fixed term, no partner can during such term retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court.

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner the Court may dissolve the partnership in the following cases:—

(1.) When a partner becomes of unsound mind.

(2.) When a partner other than the person suing has been adjudicated an insolvent under any law relating to insolvent debtors.

(3.) When a partner other than the person suing has done any act by which the whole interest of such partner is legally transferred to a third person.

(4.) When any partner becomes incapable of performing his part of the partnership contract.

(5.) When a partner other than the person suing is guilty of gross misconduct in the affairs of the partnership or towards his partners.

(6.) When the business can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

255. A partnership is in all cases dissolved by its business being prohibited by law.

Application of original terms to partnership continued under them.

256. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

Benefit derived from transaction affecting partnership.

258. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(*a.*) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(*b.*) A, B and C carry on business together in partnership as merchants, trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

Profits made in competing business.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

Liability of incoming partner.

260. Every person introduced as a partner into a pre-existing firm, is subject to all the obligations incurred by the firm before he was introduced.

Revocation of continuing guarantee by change in firm.

261. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm, to which, or in respect of the transactions of which, such guarantee was given.

Non-liability of deceased partner's estate for subsequent obligations.

262. The estate of a partner who has died is not liable in respect of any obligation incurred by the firm after his death in the absence of agreement to the contrary.

Payment of partnership-debts, and of separate debts.

263. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be paid to him or applied in payment of his separate debts. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Continuance of partners' rights and obligations after dissolution.

264. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.

Notice of dissolution.

265. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they had themselves notice of such dissolution.

Winding-up by Court after termination of partnership.

266. In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

Limited-liability partnerships, incorporated partnerships, and joint-stock companies.

267. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law now in force in India relating thereto, until further provision shall be made in that behalf.

SCHEDULE.

ENACTMENTS REPEALED.

Statutes.

No. and year of Statute Act.	Title.	Extent of repeal.
Stat. 29 Car. 2, cap. 3.	An Act for prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4 and 17.
Stat. 11 & 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

No. and year of Act.	Title.	Extent of repeal.
Act XIII of 1840.	An Act for the amendment of the law regarding factors by extending to the territories of the East India Company, in cases governed by the English law, the provisions of the Stat. 4 Geo. iv, c. 83, as altered and amended by the Stat. 6 Geo. iv, c. 94.	The whole.
Act XIV of 1840.	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of Stat. 9 Geo. iv, cap. 14.	The whole, except section 4.
Act XXI of 1848.	An Act for avoiding Wagers...	
Act V of 1866	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Section 10.
Act XV of 1866.	An Act to amend the law of Partnership in India.	The whole.

BOMBAY ACT.

No. and year of Act.	Title.	Extent of repeal.
Act III of 1865.	An Act to amend Act XXI of 1848 (for avoiding wagers).	The whole.

H. S. CUNNINGHAM,
Offg. Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

[First Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th March 1872:—

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations to which the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter was referred have, in addition to the papers enumerated in our preliminary report of the 30th January last, considered the papers marginally noted, and beg to make the following recommendations:—

From Chief Secretary to Government, Fort Saint George, No. 282, dated 27th February 1866, and enclosures.

From Acting Secretary to Government, Bombay, No. 3263, dated 15th October 1866, and enclosures.

From Secretary to Government, North-Western Provinces, No. 884A, dated 4th December 1865.

From Secretary to Government, Panjáb, No. 80, dated 26th January 1866.

From Secretary to Government, Home Department, to Secretary to Government of Bengal, No. 199, dated 10th January 1867.

Endorsement, Home Department, No. 156J, dated 30th January 1872, forwarding letter from Secretary to Government of Bengal, No. 357, dated 17th January 1872, and enclosures.

From Solicitor to Government (Bengal), No. 104, dated 29th January 1872, forwarding opinion of the Advocate General, dated 27th January 1872.

Office Memo., Home Department, No. 231J, dated 3rd February 1872, forwarding letter from Junior Secretary to Government, Bengal, No. 434, dated 20th January 1872, and letter from Officiating Secretary to Chief Commissioner, Oudh, No. 333, dated 20th January 1872, and enclosures.

Endorsement, Home Department, No. 226J, dated 3rd February 1872, forwarding letter from Secretary to Chief Commissioner, British Burma, No. 161-429, dated 9th October 1871, and enclosures.

Telegram from Registrar, High Court, Bombay, dated 6th February 1872.
" " " " Madras, dated 6th " "
" " " Chief Court, Panjáb, dated 6th " "

Office Memo., Financial Department, No. 1030, dated 8th February 1872, forwarding Office Memo., Home Department, No. 113, dated 23rd January 1872, and enclosures.

Petition from certain Members of the Bombay Association, dated 5th February 1872.

Endorsement, Home Department, No. 113P, dated 9th February 1872, forwarding Office Memo., Foreign Department, No. 13J, dated 24th January 1872, and enclosures.

From Registrar, High Court, Calcutta, No. 122, dated 10th February 1872.

From Private Secretary to His Honour the Lieutenant Governor of Bengal, dated 1st March 1872.

Petition from British Indian Association, dated 29th February 1872.

From Secretary to Government, Madras, No. 25, dated 19th February 1872, and enclosures.

From Assistant Registrar, High Court, Bombay, No. 276, dated 28th February 1872, and enclosures.

Endorsement, Home Department, No. 428, dated 7th March 1872, forwarding letter from Officiating 1st Assistant Resident, Haidarábád, No. 11, dated 12th February 1872.

Letter from Secretary to Chief Commissioner, Central Provinces, No. 339, dated 15th February 1872, and enclosures.

From Secretary to Government, Bombay, No. 970, dated 29th February 1872, forwarding Minute by Mr. Justice Gibbs, dated 20th April 1866.

Notes by Robert Hill Piubey, Esq., dated 16th September 1871.

Note by R. West, Esq.

Correspondence of Judicial Officers of Bombay, with notes, memoranda, &c.

From Secretary to Government, Bombay, No. 1016, dated 4th March 1872, and enclosure.

Endorsement, Home Department, No. 464, dated 9th March 1872, forwarding letter from Officiating Secretary to Government, Bengal, No. 992, dated 9th February 1872, and enclosures.

Endorsement, Home Department, No. 481J, dated 12th March 1872, forwarding letter from Officiating Secretary to Government, North-Western Provinces, No. 307A, dated 27th February 1872, and enclosures.

Endorsement, Home Department, No. 480J, dated 12th March 1872, forwarding letter from Officiating Secretary to Government, Panjáb and its Dependencies, No. 423, dated 12th February 1872, and enclosures.

Office Memo., Foreign Department, No. 519 G, dated 13th March 1872.

Endorsement, Home Department, No. 545 J, dated 18th March 1872, forwarding letter from Commissioner of the Dacca Division, No. 138T, dated 8th February 1872, and enclosures.

Memo. by His Honour the Lieutenant Governor of Bengal, dated 19th March 1872.

Notes by His Honour the Lieutenant-Governor of Bengal and by the Hon'ble F. S. Chapman, dated 21st March 1872.

2. With regard to European British subjects, we have, except in one particular, maintained the arrangements proposed in the first resolution of our preliminary report. We recommend (*a*). that a Magistrate of the first class, who is a European British subject and a Justice of the Peace, shall have power to try European British subjects for offences of the class usually tried by Magistrates, and, on conviction, to pass any sentence warranted by law, not exceeding three months' imprisonment and one thousand rupees fine.

(*b*.) That a Sessions Judge, who is a European British subject, may try European British subjects for offences which are not punishable with death or transportation for life, and which can, in his opinion, be adequately punished with a sentence of one year's imprisonment and fine. In case the Sessions Judge considers that such punishments are inadequate, he will transfer the case for disposal to the High Court.

3. In trials of European British subjects before a Sessions Court, the Judge will follow his ordinary procedure, and the trial will be either with assessors or by jury. Not less than half the assessors or jurors, as the case may be, are to be European British subjects. To obtain this number we have allowed the Judge to summon persons who could, in other trials, claim exemption.

4. We maintain the proposal referred to in the preliminary report, Resolution 1, clause 4, that any European British subject may apply to a High Court for an order to bring the applicant before it and to examine the legality of his imprisonment; and we have empowered the High Court to make the necessary inquiries, by affidavit or otherwise, either before or after the issue of such an order, with a view to ascertaining the state of the case.

5. We consider such an order preferable to the common law writ of *Habeas Corpus* on account of the intricacies of procedure connected with the issue of and returns to that writ.

6. We propose, accordingly, that no writs of *Habeas Corpus* or Mainprise shall be issued beyond the Presidency towns. Whether, as the law now stands, they can be issued, may be regarded as a moot point; but we think the existence of such a power would be unsuited to this country. The provisions of the Penal Code on "Wrongful Restraint" appear to us to be quite sufficient protection for personal liberty in all common cases.

7. We have cleared up the doubt which has hitherto existed as to whether all portions of the Code apply to European British subjects, by providing that, except in respect of the special privileges above described, and in respect of orders under chapter thirty-seven to give security in cases of bad livelihood, the Criminal Procedure Code shall be applicable to all persons alike.

8. With regard to the second Resolution of the preliminary report, we have, after communication with the several High Courts, come to the conclusion that it would not be convenient to deal in this Bill with the procedure of Police Magistrates in Presidency towns, and of High Courts in the exercise of their original criminal jurisdiction within the like limits. The subject is, however, one which, in our opinion, calls for early legislation; and we recommend that a Bill which has been prepared in the Legislative Department, dealing with these matters, should be taken into consideration at the first convenient opportunity.

9. As to Resolution 3, we do not recommend the abolition of the jury system; but we think that the opinion of a majority of the jurors with the concurrence of the Judge should decide the case; and that, if a Judge differs from the verdict of the majority of the jury, he should have power to refer the case to the High Court, which may pass such order thereon as it thinks fit.

10. To come to the details of the Bill as now amended, several additions have been made to the chapter of definitions. We have assigned a precise meaning to "Investigation," "Inquiry," "Trial," "Judicial proceeding," "Province," "High Court," "European British subject," "Sessions case," "Magistrate's case," "Summons Case" and "Warrant case," "Cognizable," "non-cognizable," &c. The effect of these definitions will be, we think, to render the provisions of the Code more distinct and intelligible.

11. We have provided that the criminal Courts shall have jurisdiction in offences created by special and local laws which are silent as to the tribunal intended, but no Court is to take cognizance of offences punishable with more than twice the maximum punishment which it can inflict, nor is it to inflict a punishment in excess of its powers.

12. In Part II, we make provision for the constitution of all criminal Courts subordinate to the High Court. Besides the ordinary Courts, power is given to the Local Government to appoint Additional Sessions Judges and Assistant Sessions Judges, whose powers will be on the same footing as the Assistant Sessions Judges at present existing in Bombay.

13. We have grouped, in several consecutive sections, the powers, judicial and miscellaneous, of Magistrates. Section 20 sets forth the punishments which Magistrates of the first, second and third classes may inflict: section 21 gives a list of all the principal miscellaneous magisterial powers, and the following sections, 22—29, specify which of these powers are to be inherent in each class of Magistrates, and which of them may be conferred on Magistrates by the Local Governments and the Magistrate of the District, respectively.

14. Sections 32—34 deal with the effect of irregularities. With a view to preventing trials being improperly set aside on account of irregularities not involving a substantial failure of justice, we have provided, in the case of all the most probable irregularities, what the precise effect of an irregularity shall be.

15. We have provided that the Magistrate of the District may distribute the criminal business of his district locally, by giving to specified Magistrates the power to entertain complaints in certain areas.

16. The position of the Magistrate of the District in relation to all other Magistrates having jurisdiction in the district has been distinctly defined: all other Magistrates, including Magistrates in charge of a division of a district, have been made subordinate to him, and we propose to invest him with power to withdraw any case or class of cases from a Subordinate Magistrate, and to try it himself or transfer it to any other Court of competent jurisdiction.

17. The Local Government is empowered to create Divisions of Districts, and we have clearly described the position of the Magistrate in charge of a Division of a District, and his relations to the Magistrate and other local officials.

18. In the districts where there are Commissioners and Deputy Commissioners, we have provided that the Chief Executive Officer of a District may try, as a Magistrate, cases not punishable with death; but in any case in which a sentence of more than three years' imprisonment is passed, the order must be confirmed by the Court of Session.

19. We have provided for the creation of Special Magistrates and Benches of Magistrates.

20. We have provided that the High Court may transfer any case from one subordinate Court to another, or may itself dispose of it, following the procedure of the Court from which the case was transferred.

21. We have inserted a chapter dealing with the appointment of Public Prosecutors, and defining the conditions on which private individuals may be allowed to conduct prosecutions.

22. We have added "Murder" and "Offences against the State" to the list of offences which it is the duty of the public to report: and we have embodied several provisions of the Bengal Regulations, which define the responsibility of landholders and others for the detection and prevention of local crime.

23. We have added sections empowering private individuals to arrest, in non-bailable cases, for offences for which a Police officer could arrest without warrant when committed in his sight; a power which at present exists, but is not distinctly conferred by law. In the chapter on Police investigations, we have rendered it obligatory to reply to questions asked by a Police officer, and we propose to provide that a Magistrate may assist the Police, when necessary, by coming to the spot, and recording depositions or confessions.

24. We have inserted a section to provide for the arrest, by masters and mates of British merchant vessels, of deserters from such vessels, and have defined the duty and responsibility of the Police in this matter.

25. We have made the venue sections of the Code applicable to Police inquiries, so that henceforth the same principles will guide a Magistrate and a Police officer in determining whether he has jurisdiction to inquire or to investigate.

26. We have provided that Police officers, deputed by the officer in charge of the Police station to make an investigation, should have power to take the statements of persons and search for any necessary evidence, in the same manner as the officer in charge of the Police station.

27. We have cleared up a doubt which previously existed as to the detention in Police custody by order of a Magistrate, and whilst we have not required the accused person to be at once brought brought before a Magistrate—as that course would defeat the object in view—we have provided that, if such an order is passed by a subordinate Magistrate, he shall report the fact and his reasons for passing the order to the Magistrate of the District or of the division of the district. Thus securing a close supervision over the grant of these orders.

28. We have provided that officers in charge of a Police station holding inquests, may summon any necessary witnesses, and we have empowered Magistrates to hold inquests in substitution for, or in addition to, the inquest by the Police. It is proposed also that any powers exerciseable by a subordinate Police officer may be exercised by his superior throughout the local jurisdiction of the superior.

29. In Part IV, we have distinctly defined the classes of Magistrates who may entertain complaints, act without any complaint, or commit to the Court of Session, and have set forth the procedure necessary for compelling appearance.

30. In chapter XIII, we have, following the provisions of an old Regulation, provided for the issue of a warrant to landholders and other persons for the apprehension of criminals on their estates.

31. We have provided that the dismissal of a summons case shall operate as an acquittal.

32. In chapter XIV, we have cleared up the doubt which formerly existed as to whether a Court might, except in summons cases, allow an offence which was by law compoundable, to be compounded in Court. We recommend that this should be allowed.

33. In chapter XVIII, we have provided a procedure for the summary trial of all summons cases and certain other specified offences. We have made the power to hold summary trials inherent in the Magistrate of the District, but have empowered the Local Government to invest first class Magistrates or Benches of Magistrates with all or any of the powers mentioned in this chapter. The chief feature of the summary trial, as we propose it, is that instead of the usual record of the proceedings, there will be a mere register in non-appealable cases, and a curtailed record of the evidence in appealable cases. In summary trials held by Magistrates of the first class or Benches of Magistrates exercising first class powers, there will be no appeal from a sentence of three months' imprisonment or fine not exceeding two hundred rupees.

34. In chapter XIX, section 249, we have provided in the case of trials by a Session Judge that the depositions given before the committing Magistrate may be referred to and used by the Court.

35. We have provided that an Appellate Court may, if it think fit, enhance the sentence passed by the original Court; but if the sentence was passed by a Magistrate, the punishment is not to exceed that which a first class Magistrate could award, and we have made provision for notice of appeal being given in certain cases to the prosecution.

36. We have explicitly stated, in the chapter on Trials before the Court of Session, the privilege of counsel for the prosecution and defence to address the Court in the conduct of their case, and we have given the Court power to examine the accused at any stage of the proceedings.

37. With a view to emphasizing the responsibility of the Magistrate of the District for the peace and order of the district, we have provided that appeals from orders by Magistrates to furnish security for good behaviour shall, in every instance, lie to this officer.

38. In the chapter on Reference, we have provided that the High Court shall have the same powers in cases tried by juries as in cases tried with the aid of assessors.

39. We have somewhat amplified the powers of the High Court as to revision.

40. We have inserted sections in the chapter on Trials before the Court of Session defining the relative duties of the Judge and the jury.

41. We have allowed Appellate Courts desiring further evidence the option of taking such evidence themselves, or of ordering it to be taken.

42. We have given authority to the High Court to postpone and commute a sentence of death passed on a pregnant woman.

43. We have provided that, when a person sentenced to whipping is incapable, on medical grounds, of undergoingthe whole of the sentence, the Court may pass any other sentence in lieu of the part of the whipping not undergone.

44. In chapter XXIV, section 328, we have provided that, in cases where, without objection on the part of the accused, evidence has been taken partly by one Magistrate and partly by another, the conviction may, if the accused person has not been prejudiced, be upheld.

45. In section 327, we have provided that, in the case of accused persons who abscond, any competent Court may record the statements of persons acquainted with the facts of the case, and that such statements shall subsequently be available for the purpose of the trial.

46. Commitments made on evidence partly recorded by one officer and partly by another will, in every case, be sustainable.

47. We have provided for the issue of a Commission by the High Court or Court of Session for the purpose of taking evidence in cases in which serious inconvenience would result from requiring the personal attendance of the witness.

48. In cases where the punishment consists only of fine, we have provided that the imprisonment in default of payment of fine shall not exceed the imprisonment the Court is competent to inflict as a substantive sentence.

49. We have added explanations and illustrations to elucidate the law relative to the power of the Courts to try two or more offences at one time, as the corresponding section of Act XXV of 1861 has given rise to a very large number of constructions by the superior Courts, and several of these rulings enunciate conflicting principles.

50. In order to render section 75 of the Indian Penal Code operative, we have provided that persons coming within its provisions shall ordinarily be committed.

51. We have empowered the Governor General in Council and the Local Government to revoke a conditional pardon granted by him or by it. This is to meet the difficulty of proving in a Court of justice that a man knows more than he pretends to know.

52. We have provided that, in addition to summons cases, the Court may, in the trial of certain specified offences, record evidence in the mode provided for summons cases. The object being to simplify the record in trials where technical points are not likely to occur.

53. We have restricted the power to grant warrants of search for letters in the Post Office to Magistrates of Districts.

54. Under the Criminal Procedure Code, an officer in charge of a Police station could require an officer in charge of another Police station to search for anything necessary to the conduct of an investigation, but no power was given to the latter to comply with the requisition. We have supplied the omission.

55. We have legalized the existing practice of searching arrested persons.

56. We have empowered the Court of Session in all cases to direct the admission of accused persons to bail.

57. In the chapter (XXIX) on the formation of lists of assessors and jurors, we have provided that the Sessions Judge shall sit with the Collector. We have exempted all officers in civil employ superior in rank to a Magistrate of the District, and have given power to the Local Government to exempt any person from liability to serve as a juror or assessor.

58. We have provided, generally, that distress warrants may be executed in the district in which they are issued and in any district in which they may be endorsed.

59. We have restricted the power of tendering a pardon, on condition of evidence being given, to cases triable exclusively by a Court of Session.

60. In chapter XXVI, we have given Magistrates, in warrant and sessions cases, the power of refusing to summon any witness who clearly appears to be unnecessary; we have extended to all warrant and non-cognizable summons cases the provision now applicable only to sessions cases, enabling the Court to require deposit of the expenses of a witness prior to summoning him.

61. We have made the necessary provision for securing documentary evidence, and for impounding such documents as the Court thinks fit.

62. In chapter XXXI, we have provided, in the case of criminal lunatics, that it shall rest with the Local Government to decide whether a criminal lunatic, who is pronounced harmless by a Commission, shall or shall not be released.

63. We have redrawn the chapter on Charges, with a view to increased simplicity; and we have introduced provisions as to joinder of several charges in a single trial, and of several persons in a single charge.

64. In chapter XXXIV, we have stated the matters which the finding must necessarily contain, but have left the Courts to adopt the form in which those matters shall be expressed.

65. In chapter XXXV, with a view to avoiding miscarriages of justice, we have provided that a sanction for a prosecution under any specified section shall cover a prosecution for the same facts under any other section.

66. We have provided that any person having the care of a married woman may institute a prosecution for adultery committed with her. This provision is designed to meet the case of Native soldiers while on service.

67. We have added a chapter on the dispersion of unlawful assemblies, in which the duties of the Magistrate, the officer commanding the troops, and the soldiery are distinctly laid down.

68. In chapter XXXVIII, we have distinctly provided that the provisions for taking security for good behaviour shall not apply to European British subjects; such cases appear to be sufficiently and more appropriately dealt with under the European Vagrancy Act.

69. We have restricted the power to make orders to prevent obstructions and prohibit nuisances to Magistrates of Districts and Magistrates of Divisions of Districts, and to such Magistrates as may be specially authorized to exercise this power.

70. In chapter XXXIX, we have provided, in local nuisance cases, for the mode in which the jury shall be summoned, and in which its duties shall be performed.

71. In chapter XL, we have given power to criminal Courts convicting any person of an offence attended with criminal force, by which any person was dispossessed of immoveable property, to restore the dispossessed person to possession without prejudice to the decision of a civil Court.

72. Under chapter XLI, we have provided that an order of maintenance may be enforced as a warrant for the levy of a fine in any district in which the person to whom the order is addressed may happen to be.

73. In the schedule, we have to some degree extended the powers of Magistrates. There are many offences punishable under the Indian Penal Code with very severe sentences, but which embrace within their definitions crimes of every shade, from the offence which demands the heaviest penalty, to that which is suitably punished by a short term of imprisonment. In extending the power of the Courts to try offences, we have left it to their discretion to exercise jurisdiction or to commit for trial as the circumstances of each case may demand.

74. Subject to the above amendments, we recommend that the Bill be passed.

75. The Committee wish, in conclusion, to record the valuable services which have been rendered by Captain Newbery throughout the preparation of this Bill, and the important assistance which they have received from his experience, industry and skill. It is in no small degree owing to him that the Bill has, within the limited time prescribed, been advanced to its present stage of completeness.

J. F. STEPHEN.
G. CAMPBELL.
J. STRACHEY.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 12th March 1872.

CRIMINAL PROCEDURE BILL.

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A Bill for regulating the Procedure of the Courts of Criminal Judicature.

[As amended by the Select Committee.]

C. I, -4.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter; It is hereby enacted as follows:—

PART I.

CHAPTER I.

PRELIMINARY, REPEAL, LOCAL EXTENT AND DEFINITIONS.

Short title.

1. This Act may be called "The Code of Criminal Procedure."

Local extent.

It extends to the whole of British India, except the presidency towns;

Commencement.

And it shall come into force on the first day of September 1872.

Repeal of enactments.

2. The enactments mentioned in the first schedule hereto annexed are repealed.

Saving of special procedure.

Wherever a special form of procedure is prescribed by any law, not expressly repealed in the first schedule to this Act, it shall not be deemed to have been impliedly repealed by reason of its being inconsistent with the provisions of this Code.

References to Code of Criminal Procedure.

In every Act passed before this Act, in which reference is made to the Code of Criminal Procedure, such reference shall be taken to be made to this Act.

References in former Acts.

In every Act, passed before this Act, the expressions "officer exercising the powers of a Magistrate," "Subordinate Magistrate, first class" and "Subordinate Magistrate, second class," shall, respectively, be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class," as defined in this Act.

Certain specified references.

The references made in the Acts mentioned in column one of the fifth schedule to this Code shall be taken to be made to the sections of this Code given in column three of the said schedule.

Notifications published and orders made under any section of any Act hereby repealed, shall be deemed to have been published and made under the corresponding section of this Act.

Pending cases.

3. Cases pending in any Criminal Court when this Act comes into force shall be decided as far as may be according to the procedure provided in this Act.

Definitions.

4. In this Act the following words and expressions have the following meanings unless a different intention appears from the context:—

"Special law."

"Special law" means a law applicable to a particular subject.

"Local law."

"Local law" means a law applicable to a particular part of British India.

"Investigation."

"Investigation" includes all the proceedings by the Police, authorized by this Act, for the collection of evidence.

"Inquiry."

"Inquiry" means any inquiry which may be conducted by a Magistrate or Court under this Act.

"Inquired into."

"Inquired into" means and includes every proceeding preliminary to trial.

"Trial."

"Trial" means the proceedings taken in Court after a charge has been drawn up and includes the punishment of the offender.

It includes the proceedings under Chapters XVI and XVIII from the time when the accused appears in Court.

"Judicial Proceeding"

"Judicial Proceeding" means any proceeding in the course of which evidence is taken.

"Written."

"Written" includes "printed," "lithographed," "photographed" and "engraved."

"Criminal Court."

"Criminal Court" means and includes every Judge or Magistrate, or body of Judges or Magistrates inquiring into or trying any criminal case or engaged in any judicial proceeding.

"Province."

"Province" means the territories under the Government or Administration of any Local Government.

"Presidency town."

"Presidency town" means the local limits of the ordinary criminal jurisdiction of the High Courts of Calcutta, Madras or Bombay.

"High Court."

"High Court" means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects, the High Courts of Calcutta, Madras, Bombay, the High Court for the North-Western Provinces, and the Chief Court of the Panjáb.

In other cases "High Court" means the highest Court of criminal appeal or revision in any province.

"Session case."

"Session case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by a Court of Session and all cases which Magistrates commit to a Court of Session although they might have tried them themselves.

In the case of offences created by special and local laws, "Session case" means cases which are triable by the Court of Session or which the Magistrate commits to the Court of Session though he might have tried them himself.

"Magistrate's case."

"Magistrate's case" means and includes all cases specified in column 7 of the fourth schedule to this Act as cases triable by Magistrates and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session.

"Cognizable offence or case."

"Cognizable offence or case" means an offence for or a case in which a police officer may, by any law in force, arrest without warrant.

s. II, IV, 19.

"Non-cognizable offence or case" means an offence for or a case in which a police officer may not arrest without warrant.

"Non-cognizable offence or case."

"Summons case" means an offence of the class described in section one hundred and forty-eight.

"Summons case."

"Warrant case" means an offence of the class described in section one hundred and forty-nine.

"Warrant case."

"Bailable offence or case" means an offence for or a case in which bail may be taken under the fourth schedule to this Act or by any other law in force.

"Bailable offence or case."

"Non-bailable offence or case" means an offence for or a case in which bail may not be taken under the fourth schedule to this Act or by any law in force.

"Non-bailable offence or case."

PART II.

CONSTITUTION AND POWERS OF THE CRIMINAL COURTS.

CHAPTER II.

OF CRIMINAL TRIALS AND INQUIRIES.

Grades of Criminal Courts.

5. There shall be four grades of Criminal Courts in British India—

I.—The Court of the Magistrate of the 3rd Class.

II.—The Court of the Magistrate of the 2nd Class.

III.—The Court of the Magistrate of the 1st Class.

IV.—The Court of Session.

What Officers to hold inquiries.

6. All inquiries shall be held by Magistrates according to the provisions hereinafter contained.

What Courts to try offences.

7. All Criminal trials in British India shall be held before the Courts specified in the fourth schedule to this Act, or before the Courts specified in any law by which the offence is created, according to the provisions hereinafter contained.

Offences under local and special laws.

8. Offences punishable under any law, other than the Indian Penal Code, containing no distinct provision as to the Court or Officer before which or before whom they are to be tried, may be inquired into and tried, according to the provisions hereinafter contained, by the Criminal Courts appointed under this Act. But no such Court shall award any sentence in excess of its ordinary powers, or try any such offence if it be punishable with more than twice the punishment which such Court is competent to inflict.

Appointment and removal of Judges and Magistrates.

9. All Judges and Magistrates shall be appointed and may be removed by the Local Government, but such officers as are now appointed or removed by the Government of India shall continue to be so appointed or removed.

Saving of existing incumbents.

10. All existing Judges and Magistrates shall be deemed to have been appointed under this Act.

Inquiry and trial in case of European British subjects.

11. Offences committed by European British subjects shall be inquired into and tried according to the provisions of Chapter VII, and not otherwise, but the other provisions of this Act shall apply to all persons without distinction of race unless a contrary intention is expressed.

CHAPTER III.

OF COURTS OF SESSION.

Sessions Divisions.

12. Every province shall be divided into Sessions Divisions.

Power to alter Divisions.

13. The Local Government shall have power to alter or vary from time to time the number or extent of such divisions.

Existing local jurisdictions of Sessions Courts to be Sessions Divisions.

14. The existing local jurisdictions of Courts of Session shall be Sessions Divisions, unless and until they are so varied or altered.

One Court for each Division.

15. There shall be a Court of Session in every Sessions Division.

It shall have power to try any offence and to pass upon any offender any sentence authorized by law, subject to the provisions of this Act.

Appointment and powers of Sessions Judges.

16. There shall be a Sessions Judge for every Sessions Division. The Sessions Judge shall exercise all the powers of the Court of Session in his Sessions Division.

Appointment and powers of Additional and Joint Sessions Judges.

17. The Local Government may appoint Additional Sessions Judges or Joint Sessions Judges who shall exercise all the powers of a Court of Session in one or more Sessions Divisions in which they may be directed to act, but shall try such cases only as the Local Government directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Appointment and powers of Assistant Sessions Judges.

18. The Local Government may also appoint Assistant Sessions Judges who shall exercise all the powers of a Court of Session in the Sessions Division to which they may be attached, except the power of passing sentences of death, or transportation, or imprisonment for more than seven years, but they shall try those cases only which the Sessions Judge of the Sessions Division makes over to them either by general orders or by a special order.

Any sentence of more than three years' imprisonment passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. The Sessions Judge may either confirm, modify or annul such sentence of the Assistant Sessions Judge.

CHAPTER IV.

OF MAGISTRATES AND THEIR POWERS.

Magistrates to be of three classes.

19. Magistrates shall be either—

Magistrates of the First Class,

Magistrates of the Second Class, or

Magistrates of the Third Class.

Part II, C. IV, ss. 20—22.

Magistrates' powers to try offences.

20. The powers of Magistrates in respect to the trial of offences and to passing sentences on persons convicted of them are as follows—

Powers of Magistrates, First Class.

Magistrates of the First Class may pass the following sentences:—

Imprisonment not exceeding the term of two years (including such solitary confinement as is authorized by law);

Fine to the extent of one thousand rupees;

Whipping.

Powers of Magistrates, Second Class.

Magistrates of the Second Class may pass the following sentences:—

Imprisonment not exceeding six months;

Fine not exceeding two hundred rupees;

Whipping.

Powers of Magistrates, Third Class.

Magistrates of the Third Class may pass the following sentences:—

Imprisonment not exceeding one month;

Fine not exceeding fifty rupees.

A Magistrate of the Second or Third Class may not pass a sentence of solitary confinement, nor may a Magistrate of the Third Class pass a sentence of whipping.

Any Magistrate may pass any lawful sentence combining any of the sentences which he is authorized by law to pass.

Powers conferred upon Magistrates.

21. In addition to the powers given in section twenty, the following powers are conferred, as hereinafter provided, upon Magistrates by this Act:—

(1.) Power to make over cases to a Subordinate Magistrate. (s. 44.)

(2.) Power to pass a sentence on proceedings recorded by a Subordinate Magistrate. (s. 46.)

(3.) Power to withdraw cases and to try or refer them for trial. (s. 47.)

(4.) Power to withdraw or refer appeals from convictions by 2nd and 3rd grade Magistrates. (s. 47.)

(5.) Power to arrest an accused person found in Court. (s. 104.)

(6.) Power to order the Police to investigate an offence. (s. 110.)

(7.) Power to record confessions or statements during a Police investigation. (s. 122.)

(8.) Power to authorize detention of a person during a Police investigation. (s. 124.)

(9.) Power to hold an inquest. (s. 135.)

(10.) Power to entertain complaints and receive Police reports. (s. 141.)

(11.) Power to entertain cases without complaint. (s. 142.)

(12.) Power to commit for trial. (s. 143.)

(13.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (s. 157.)

(14.) Power to direct warrant to landholder. (s. 162.)

(15.) Power to arrest offender in presence of Magistrate. (s. 166.)

(16.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. (ss. 168 and 170.)

(17.) Power to issue proclamation. (ss. 171 and 353.)

(18.) Power to attach and sell. (ss. 172 and 354.)

(19.) Power to try summarily. (s. 222.)

(20.) Power to hear appeals from convictions by 2nd and 3rd class Magistrates. (s. 266.)

(21.) Power to call for proceedings. (ss. 295 and 296.)

(22.) Power to quash convictions in certain cases. (s. 328.)

(23.) Power to issue a search-warrant for letter in Post Office. (s. 369.)

(24.) Power to endorse a search warrant and order delivery of thing found. (ss. 372, 373 and 376.)

(25.) Power to issue search-warrant otherwise than in the course of an inquiry. (s. 377.)

(26.) Power to revise bail orders. (s. 398.)

(27.) Power to sell perishable property of a suspicious character. (s. 415.)

(28.) Power to sell suspicious or stolen property. (s. 417.)

(29.) Power to demand security to keep the peace. (s. 491.)

(30.) Power to discharge recognizances to keep the peace. (s. 500.)

(31.) Power to demand security for good behaviour. (ss. 504 and 505.)

(32.) Power to discharge person bound to be of good behaviour. (s. 511.)

(33.) Power to issue order to prevent obstruction, &c. (s. 518.)

(34.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

(35.) Power to make orders, &c., in local nuisance cases. (s. 521.)

(36.) Power to make orders, &c., in possession cases. (s. 530.)

(37.) Power to make orders of maintenance. (s. 536.)

Powers common to all Magistrates.

22. Magistrates of all classes shall, as such, have the following powers:—

(1.) Power to arrest an accused person found in Court. (s. 104.)

(2.) Power to record confessions or statements during a Police investigation. (s. 122.)

(3.) Power to authorize detention of a person during a Police investigation. (s. 124.)

(4.) Power to arrest offender in the presence of Magistrate. (s. 166.)

(5.) Power to endorse warrant, or to order the removal of an accused person arrested under a warrant. (ss. 168—170.)

(6.) Power to issue proclamation in cases judicially before him. (ss. 171 and 353.)

(7.) Power to attach and sell moveable property in cases judicially before him. (s. 354.)

(8.) Power to endorse a search warrant and order delivery of thing found. (ss. 372, 373 and 376.)

(9.) Power to sell perishable property of a suspicious character. (s. 415.)

II, C. 23—

23. In addition to the powers mentioned in section twenty-two a Magistrate of the 3rd class may be invested with the following powers :—

Powers which Local Government and Magistrate of the District may confer on 3rd class Magistrates.

(*a.*) By the Local Government—
(1.) Power to hold inquests. (s. 135.)
(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
(3.) Power to commit for trial. (s. 143.)
(4.) Power to issue order to prevent obstruction, &c. (s. 518.)
(5.) Power to issue order prohibiting repetition of nuisance. (s. 519.)
(*b.*) By the Magistrate of the District—
(1.) Power to hold inquests. (s. 135.)
(2.) Power to entertain complaints of offences in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
(3.) Power to issue order to prevent obstruction, &c. (s. 518.)
(4.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

24. Magistrates of the 2nd class shall, as such, in addition to the powers mentioned in section twenty-two, have the following power :—

Powers of Magistrates of the 2nd class.

(1.) Power to order the Police to investigate an offence in which he has jurisdiction to try or to commit for trial. (s. 110.)

25. In addition to the powers given and referred to in section twenty-four, a Magistrate of the 2nd class may be invested with the following powers :—

Powers which may be conferred on 2nd class Magistrates.

(*a.*) By the Local Government—
(1.) Power to hold inquests. (s. 135.)
(2.) Power to entertain complaints and receive police reports in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
(3.) Power to entertain without complaint cases which he has jurisdiction to try or to commit for trial. (s. 142.)
(4.) Power to commit for trial. (s. 143.)
(5.) Power to issue order to prevent obstruction, &c. (s. 518.)
(6.) Power to issue order prohibiting repetition of nuisance. (s. 519.)
(*b.*) By the Magistrate of the District—
(1.) Power to hold inquests. (s. 135.)
(2.) Power to entertain complaints and receive police reports in cases in which he has jurisdiction to try or to commit for trial. (s. 141.)
(3.) Power to issue order to prevent obstruction, &c. (s. 518.)
(4.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

26. Magistrates of the 1st class shall, as such, in addition to the powers mentioned in sections twenty-two and twenty-four, have the following powers :—

Powers of Magistrates of the 1st class.

(1.) Power to commit for trial. (s. 143.)
(2.) Power to issue search warrant otherwise than in the course of an inquiry. (s. 377.)
(3.) Power to demand security to keep the peace. (s. 491.)
(4.) Power to demand security for good behaviour. (ss. 504 and 505.)
(5.) Power to make orders, &c., in possession cases. (s. 530.)
(6.) Power to make orders of maintenance. (s. 536.)

27. In addition to the powers given and referred to in section twenty-six, a Magistrate of the 1st class may be invested with the following powers :—

Powers which may be conferred on 1st class Magistrates.

(*a.*) By the Local Government—
(1.) Power to make over cases taken up on complaint, &c., to a subordinate Magistrate. (s. 44).
(2.) Power to hold inquests. (s. 135.)
(3.) Power to entertain complaints of offences, and receive police reports. (s. 141).
(4.) Power to entertain cases without complaint. (s. 142).
(5.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (s. 157.)
(6.) Power to try summarily. (s. 222.)
(7.) Power to hear appeals from convictions by 2nd and 3rd class Magistrates. (s. 266.)
(8.) Power to sell suspicious or stolen property. (s 417.)
(9.) Power to issue order to prevent obstruction, &c. (s. 518.)
(10.) Power to issue order prohibiting repetition of nuisance. (s. 519.)
(11.) Power to make orders, &c., in local nuisance cases. (s. 521.)
(*b.*) By the Magistrate of the District—
(1.) Power to hold inquests. (s. 135.)
(2.) Power to entertain complaints of offences, and receive police reports. (s. 141.)
(3.) Power to issue order to prevent obstruction, &c. (s. 518.)
(4.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

28. Magistrates of Divisions of Districts shall, as such, have all the powers given to 1st class Magistrates, and referred to in section twenty-six, and, in addition, shall have the following powers :—

Powers of Magistrates of Divisions of Districts.

(1.) Power to pass sentence on proceedings recorded by a subordinate Magistrate. (s. 46.)
(2.) Power to withdraw cases (but not appeals) and to try or refer them for trial. (s. 47.)
(3.) Power to hold inquests. (s. 135.)
(4.) Power to entertain complaints of offences, and receive police reports. (s. 141.)
(5.) Power to entertain cases without complaint. (s. 142.)
(6.) Power to issue process for person within jurisdiction who has committed an offence outside Magistrate's local jurisdiction. (s. 157.)
(7.) Power to issue search warrant otherwise than in the course of an inquiry. (s. 360.)
(8.) Power to sell suspicious or stolen property. (s. 417.)

Part II, C. IV, ss. 29. —37.

(9.) Power to issue order to prevent obstruction, &c. (s. 518.)

(10.) Power to issue order prohibiting repetition of nuisance. (s. 519.)

(11.) Power to make orders in local nuisance cases. (s. 521.)

Provided that, if a Magistrate of a Division of a District exercise the powers of a 2nd class Magistrate, he shall not have power to demand security to keep the peace.

Powers which Local Government may confer on Magistrates of Divisions of Districts.

29. In addition to the powers given and referred to in section twenty-eight, the Local Government may confer on a Magistrate of a Division of a District, exercising the powers of a 1st class Magistrate, the following powers:—

(1.) Power to try summarily. (s. 222.)

(2.) Power to hear appeals from convictions by 2nd and 3rd class Magistrates. (s. 266.)

Powers of Magistrates of Districts.

30. Magistrates of Districts may, as such, exercise all the powers mentioned in section twenty-one.

Saving of other powers.

31. All other powers given by this Act or by any other law in force may be exercised by the officers or courts to whom or to which they are given.

Irregularities which do not vitiate proceedings.

32. If any Magistrate, not being empowered by law to act in the matter, does any one of the following things:—

(1) If he makes over a case taken up on complaint to another Magistrate,

(2) If he withdraws a case and tries it himself, or refers a case for trial,

(3) If he orders the Police to investigate an offence,

(4) If he holds an inquest,

(5) If he entertains a complaint or receives a Police report,

(6) If he issues process for the apprehension of a person who is within his local jurisdiction, and has committed an offence outside his local jurisdiction,

(7) If he issues a search warrant otherwise than in the course of an inquiry,

his proceedings shall not be set aside on that ground.

When irregular commitments may be validated.

33. If any Magistrate, not being empowered by law, commits an accused person to take his trial before a Court of Session or High Court, the Court to which the commitment was made may, after perusal of the proceedings, accept the commitment if it considers that the accused person has not been prejudiced, unless the accused person has objected to the jurisdiction of the committing Magistrate during the inquiry and before the order of commitment.

If it considers that the accused person was prejudiced, or if he objected to the jurisdiction of the committing Magistrate during the inquiry, and before the order of commitment, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Irregularities which render proceedings void.

34. If any Magistrate, not being empowered by law to act in the matter, does any of the following things, his proceedings shall be void. That is to say:—

(1) If he passes a sentence on proceedings recorded by another Magistrate,

(2) If he entertains a case without complaint,

(3) If he attaches and sells property under section 172,

(4) If he tries an offender summarily,

(5) If he decides an appeal,

(6) If he calls for proceedings,

(7) If he issues a search warrant for a letter in the Post Office,

(8) If he revises a bail order,

(9) If he sells suspicious or stolen property under section 417,

(10) If he demands security to keep the peace,

(11) If he discharges recognizances to keep the peace,

(12) If he demands security for good behaviour,

(13) If he discharges a person lawfully bound to be of good behaviour,

(14) If he makes an order in a local nuisance case,

(15) If he issues an order to prevent an obstruction,

(16) If he prohibits the repetition of a nuisance,

(17) If he makes an order in a possession case, or

(18) If he makes an order for maintenance.

The Magistrate of the District.

Magistrate of the District.

35. In every district there shall be a Magistrate of the First Class appointed by the Local Government who shall be called the Magistrate of the District and shall exercise throughout his district all the powers of a Magistrate.

Powers with which Deputy Commissioners and Chief executive officers of District may be invested.

36. In the territories subject to the Lieutenant-Governor of the Panjáb and in the territories administered by the Chief Commissioners of Oudh, the Central Provinces and British Burma, in Coorg, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the Deputy Commissioner, or other chief officer charged with the executive administration of the district in criminal matters, with power to try as a Magistrate all offences not punishable with death, and to pass sentence of imprisonment for a term not exceeding seven years including such solitary confinement as is authorized by law, or fine, or both, and whipping, or any combination of these punishments authorized by law; but any sentence of upwards of three years' imprisonment passed by any such officer shall be subject to the confirmation of the Sessions Judge to whom such Deputy Commissioner is subordinate.

Subordinate Magistrates.

Subordinate Magistrates.

37. The Local Government may appoint as many other persons besides the Magistrate of the District, as it thinks fit, to be Magistrates of the first, second or third class in the District.

All such Magistrates shall be subordinate to the Magistrate of the District.

II, C. IV, s. 17.

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.

Proviso.

38. The Local Government may, by notification in the official Gazette, prescribe the local limits of the jurisdiction of a Magistrate of the District and may by such notification from time to time alter such jurisdiction.

Power to determine local jurisdiction of a Magistrate of District.

39. The Local Government may divide any district into divisions, and from time to time alter their limits. All existing divisions of districts which are now usually put under the charge of a Magistrate shall be divisions until they are so varied or altered.

Division of Districts into divisions.

Existing divisions preserved.

40. The Local Government may place any Magistrate of the 1st or 2nd class in charge of a Division of a District.

Local Government may put Magistrate in charge of division.

Such Magistrate shall be called a Magistrate of a Division of a District and shall exercise the powers conferred on him under this Act, or under any law for the time being in force, subject to the control of the Magistrate of the District.

The Local Government may, if it thinks fit, delegate its powers under this section to the Magistrate of the District.

Delegation of power to Magistrate of District.

41. Every Magistrate in a Division of a District shall be subordinate to the Magistrate of the Division of the District, subject, however, to the general control of the Magistrate of the District.

Subordination of officers to Magistrate of division of district.

42. The Local Government may confer upon any person all or any of the powers of a 1st, 2nd or 3rd class Magistrate, in respect to particular offences, or to a particular class or particular classes of offences, or in regard to offences generally, in any part of a district or in any one or more districts, subject to such Local Government.

Special Magistrates.

Such Magistrates shall be called "Special Magistrates."

43. In conferring powers under this Act the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

Mode of conferring powers.

44. The Magistrate of the District or any Magistrate of a division of a district, may make over any criminal case taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinbefore contained.

Transfer of criminal cases to Subordinate Magistrate.

The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act, but if he does not do so the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police officer, shall be recorded on such report; and all processes issued for causing the attendance of the accused person or the witnesses shall direct them to attend before such Court.

45. If, in the course of a proceeding before a Magistrate, the evidence appears to him to warrant a presumption that the accused person has been guilty of an offence which such Magistrate is not competent to try,

Procedure of Magistrate in cases beyond his jurisdiction.

or for which he is not competent to commit the accused person for trial,

he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate, or to such other Magistrate having jurisdiction as the Magistrate of the District directs.

The Magistrate to whom the case is submitted shall either try the case himself or refer it to any officer subordinate to him having jurisdiction, or he may commit the accused person for trial.

In any such case, such Magistrate or other officer as aforesaid shall examine the parties and witnesses, and shall proceed in all respects as if no proceedings had been held in any other Court.

But any statement or confession duly made by an accused person in the course of the proceedings before the Magistrate before whom the case was originally brought shall be admissible as evidence in all subsequent proceedings.

46. Whenever a Magistrate of the 2nd or 3rd class, having jurisdiction, finds an accused person guilty, and considers that he ought to receive a more severe punishment than such Magistrate is competent to adjudge, he may record the finding and submit his proceedings and forward the accused person to the Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and summon any further witnesses and take their evidence, and shall pass such sentence or order in the case as he deems proper, and as is according to law. Provided that he shall not exceed the powers ordinarily exercisable by him under section twenty of this Act.

The Magistrate who originally dealt with the case may, if he is empowered to hold inquiries into cases triable by the Court of Session and to commit persons to take their trial before such Court, instead of submitting his proceedings to another Magistrate, commit the accused person for trial before the Court of Session instead of finding him guilty.

Magistrate may in the first instance commit accused for trial before Court of Session.

47. Magistrates of Districts and Magistrates of divisions of Districts may respectively withdraw any criminal case from any Magistrate sub-

Magistrate may withdraw or refer cases.

II ordinate to them, and may inquire into or try the
48 case themselves, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Magistrates of districts may withdraw any criminal appeal from any Subordinate Magistrate who has been authorized to hear appeals from the convictions of 2nd and 3rd class Magistrates, and may refer criminal appeals to any competent Magistrate subordinate to them.

Local Government may empower Magistrates of Districts to withdraw classes of cases.

48. The Local Government may authorize the Magistrate of the District to withdraw from the Magistrates subordinate to them, whether in charge of divisions of districts or not, either such classes of cases as he thinks proper, or particular classes of cases.

Local Government may authorize Magistrate of district to distribute business by localities.

49. The Magistrate of the District, under the general or special orders of the Local Government, may authorize any Magistrate subordinate to him to entertain complaints arising within certain local limits, and may from time to time vary such orders. Provided that no such Magistrate shall be authorized to entertain any complaint of any offence which he is not competent to try or to commit for trial.

Magistrates' Benches.

Power to invest Magistrates sitting as a bench with certain powers.

50. The Local Government may direct any two or more Magistrates to sit together as a bench, and may invest such bench with the powers of a Magistrate of the 1st, 2nd or 3rd class, and direct it to try such cases or such classes of cases only and within such limits as it thinks fit.

Powers exercisable by such bench in absence of special directions.

51. In the absence of any special direction as to the powers of any such bench, it shall have the powers of a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings.

Magistrate of the District may frame rules for guidance of benches.

52. The Magistrate of the District may, subject to the general orders of the local Government, make rules for the guidance of Magistrates' benches in his District.

Such rules shall not be inconsistent with the provisions of this Act and may deal with the following subjects:—

The classes of cases to be tried.

The times and places of sitting.

The constitution of the bench for conducting trials.

The mode of settling differences of opinion which may arise between the Magistrates in session.

Magistrate of District may vary or annul rules made under section 52.

53. The Magistrate of the District may vary or annul, from time to time, any rules made by himself or by his predecessor under the last preceding section.

Continuance and Alteration of Powers.

Powers may be varied or cancelled.

54. The Local Government may vary or cancel any powers with which any person may have been invested under this Act or any enactment hereby repealed.

Powers of officer temporarily succeeding to vacancies in office of Magistrate of District.

55. When, in consequence of the office of the Magistrate of a District becoming vacant, any officer succeeds temporarily to the chief executive administration of the district in criminal matters, such officer shall, pending the orders of the Local Government, exercise all the ordinary powers and perform all the duties of the Magistrate of the District.

Continuance of powers of officers transferred.

56. Whenever any person holding an office in the service of Government, who has been invested with any powers under this Act or any enactment hereby repealed in any district, is transferred to an equal or higher office of the same nature within another district, he shall, unless the Local Government otherwise directs, continue to exercise the same powers in the district to which he is so transferred.

CHAPTER V.

Of Public Prosecutors.

Appointment of public prosecutor.

57. The Local Government may, if it thinks proper, appoint officers to be called public prosecutors.

Appointment may be for particular case or generally.

58. Public prosecutors may be appointed either for a particular case, or for particular classes of cases, or for all cases throughout the whole or any part of any province.

Private persons may not act as prosecutors or employ counsel without permission of the Court.

59. Any Court inquiring into or trying any case may permit any person to conduct the case as prosecutor, but no person shall be entitled to do so without such permission. Any person permitted to prosecute may conduct the prosecution personally or by counsel.

He may plead in all Courts in cases under his charge.

Barristers, &c., privately instructed to be under his direction.

60. The public prosecutor may appear and plead without any written authority before all Courts in which any case under his charge is under inquiry, trial, or appeal, and if any private person instructs any barrister, attorney, pleader, or vakíl to prosecute any person in any case under the charge of the public prosecutor, the public prosecutor shall have the management of the case, and such other person shall act under his directions.

Effect of withdrawal of charge by public prosecutor.

61. The public prosecutor may, with the consent of the Court, withdraw any charge against any person in any case of which he is in charge, and upon such withdrawal, if it is made whilst the case is under inquiry, the person accused shall be discharged. If it is made when he is under trial, the person tried shall be acquitted.

Notice to public prosecutor of appeal in cases prosecuted by him.

62. If an appeal is brought in any case in which any person prosecuted by the public prosecutor has been convicted, notice of such appeal and a copy of

the grounds of appeal shall be given to such public prosecutor by the Appellate Court, and the Court shall also give him due notice of the time and place at which such appeal is to be heard.

CHAPTER VI.

THE PLACE OF INQUIRY AND TRIAL.

Place for inquiry and trial of offence.

63. Every offence shall be inquired into, and, if tried by a Magistrate, shall be tried in the district in which it was committed. If tried by a Court of Session it shall be tried by that Court of Session to which the Magistrate commits.

Magistrates shall ordinarily commit to the Court of Session for the Sessions Division in which the district to which they are appointed is situated, but the Local Government may direct that any cases or class of cases committed in any district may be tried in any Sessions Division.

High Court may transfer case or direct trial in district other than that in which offence was committed.

64. Whenever it appears to the High Court that such order will promote the ends of justice, or tend to the general convenience of the parties or witnesses, it may direct the transfer of any particular criminal case, or appeal, or class of cases or appeals from a Criminal Court subordinate to its authority, to any other such Criminal Court of equal or superior jurisdiction,

or may order that any offence shall be inquired into or tried in any district or division of a district, other than that in which the offence has been committed, or that it shall be tried before itself. If the High Court withdraws any case from any other Court for trial before itself, it shall observe the same procedure which that Court would have observed if the case had not been so withdrawn.

Accused triable in district where act is done, or where consequence ensues.

65. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried in any district in which any such thing has been done or any such consequence has ensued.

Place for trial where act is offence by reason of relation to other offence.

66. When an act is an offence by reason of its relation to any other act which is also an offence, a charge for the first-mentioned offence may be inquired into and tried either in the district in which it happened or in the district in which the offence with which it was so connected happened.

Illustrations.

(*a.*) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(*b.*) A charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(*c.*) A charge for wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing or in the district in which the kidnapping took place.

Place for inquiry or trial where scene of offence is uncertain;

where an offence is a continuing one and continues to be committed in more districts than one, or

or not in one district only,

or offence is continuing,

or consists of several acts.

where it consists of several acts done in different districts,

67. When it is uncertain in which of several districts an offence was committed; or is committed partly in one district and partly in another; or it may be inquired into and tried in any one of any of such districts.

Illustrations.

(*a.*) An offence committed on a journey or voyage may be inquired into and tried in any district through which the person by whom the offence was committed, or the person against whom, or the thing on which, the offence was committed passed in the course of that journey or voyage.

(*b.*) An offence committed near the boundary between two districts may be inquired into and tried in either.

(*c.*) A charge of being a thug or of having belonged to a gang of dacoits may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*d.*) A charge of having escaped from custody may be inquired into and tried wherever the person charged happens to be when the charge is made.

(*e.*) A charge of criminal misappropriation or of criminal breach of trust may be inquired into and tried either in the district in which the property which is the subject of the offence was received, or in the district or districts in which the whole or any part of it has been misappropriated, or where the offence of criminal breach of trust has been wholly or partly committed.

Murder as a thug, dacoity or dacoity with murder.

68. The offence of murder as a thug, dacoity, or dacoity with murder may be inquired into and tried wherever the person accused may happen to be.

High Court to decide, in case of doubt, district where inquiry shall take place.

69. Whenever any doubt arises as to the district in which any offence should be inquired into or tried, the High Court within whose jurisdiction the offender is apprehended may decide in which district the offence shall be inquired into or tried.

Effect, on sentence, of holding investigation, inquiry or trial in wrong district.

70. No sentence or order of any Criminal Court shall be liable to be set aside merely on the ground that the investigation, inquiry or trial was held in a wrong district or sessions division, unless it is proved or appears that the person accused was actually prejudiced in his defence, or the prosecutor in his prosecution by such error, in either of which cases a new trial may be ordered.

CHAPTER VII.

OF CRIMINAL JURISDICTION OVER EUROPEAN BRITISH SUBJECTS.

"European British subjects."

71. The expression "European British subjects" means in this Act—

(1.) All subjects of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal.

(2.) The children and grandchildren of any such person by legitimate descent.

Officers who may inquire into and try offences committed by European British subjects.

72. No Magistrate, or Justice of the Peace, or Sessions Judge shall have jurisdiction to inquire into a complaint or try a charge against a European British subject unless he is himself a European British subject.

... II, C. VII, ss. 73—85.

No Magistrate shall have such jurisdiction unless he is a Magistrate of the 1st class and a Justice of the Peace.

No Justice of the Peace shall have such jurisdiction unless he is a Magistrate of the 1st class.

Who may hear complaints and issue process.

73. Any Magistrate who is authorized by law to entertain complaints, may entertain against European British subjects such complaints as he is authorized to entertain in the case of other persons.

If he issues any process for the purpose of compelling the appearance of any European British subject accused of an offence, such process must be returnable before a Magistrate competent to inquire into or try the case.

First class Magistrates being European British subjects, and Justices of the Peace, may inquire into complaints against European British subjects.

74. Any competent Magistrate may inquire into complaints of any offence made against a European British subject.

When such Magistrate may try, and extent of his jurisdiction.

If the offence complained of is a Magistrate's case and can be adequately punished by such Magistrate, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence, and on conviction may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine up to one thousand rupees, or both.

When commitment is to be to Court of Session.

75. When the offence complained of is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused person ought to be committed, commit him to the Court of Session.

When commitment is to be to High Court.

If the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

Jurisdiction of Court of Session.

76. Sessions Judges or Additional Sessions Judges, but not Assistant Sessions Judges, may pass on European British subjects any sentence warranted by law not exceeding one year's imprisonment, or fine, or both.

If at any stage of the proceedings the Sessions Judge thinks the offence cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. The Sessions Judge may either himself bind over, or direct the committing Magistrate to bind over the prosecutor and witnesses to appear before such High Court.

When Sessions Judge finds his powers inadequate.

Procedure when Sessions Judge is not an European British subject.

77. If the Sessions Judge of the Sessions division within which the offence is ordinarily triable be not a European British subject, the case shall be reported, by the Magistrate, as aforesaid, for the orders of the High Court.

Mode of conducting trials by Court of Session.

78. Trials of European British subjects before the Court of Session shall be conducted according to the provisions of chapter XIX.

In trials with assessors not less than half the number of assessors, and in trials by jury not less than half the number of jurors shall be European British subjects.

Appeal from conviction of such subject by Magistrate.

79. Any European British subject who is convicted by a competent Magistrate of any offence, may appeal either to the Court of Session or to the High Court.

Appeal from conviction by Court of Session.

80. Any European British subject who is convicted of any offence by any Court of Session, may appeal to the High Court.

Right of European British subject under detention to apply for order to produce his person.

81. Any European British subject who is detained in custody by any person, and who considers such detention unlawful, may apply to the High Court which would have jurisdiction over him in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the said High Court to abide such further order as may be made by it.

Procedure on such application.

The High Court, if it thinks fit, may, before issuing such order, inquire by affidavit, or otherwise, into the grounds on which it is applied for, and grant or refuse such application, or it may issue the order in the first instance, and when the person applying for it is brought before it, it may make such further order in the case as it thinks fit after such inquiry as it thinks necessary.

The High Courts may issue such orders throughout the territories over which they have jurisdiction and over such other places as the Governor General in Council may direct.

Power of High Courts as to issue of writs.

82. The High Courts shall issue no writ of *habeas corpus*, mainprise, *de homine replegiando*, nor any other writ of the like nature beyond the Presidency towns.

Procedure on claim of European British subject to be dealt with as such.

83. When any person claims to be dealt with as a European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial, and such Magistrate shall on such statement decide whether he is or is not a European British subject, and shall deal with him accordingly, and if any such person is dissatisfied with such decision, the burden of proving that it was wrong shall be upon him. If the Magistrate decide that the accused person is not a European British subject, the trial shall proceed, but such decision shall form a ground of appeal.

Failure to plead status a waiver.

84. If a European British subject does not claim to be dealt with as such before the Magistrate, before whom he is tried or committed, he shall be held to have waived his privilege as such European British subject.

Trial of person not a European British subject under this chapter.

85. If a person who is not a European British subject is dealt with as such and does not object, the proceedings shall be valid.

24 & 25 Vict., C. VII, IX, ss. 86 & 98.

86. Procedure of High Courts. All High Courts shall deal with proceedings against European British subjects outside of the Presidency towns in the manner in which they are empowered by this Act or by any other law in force for the time being to deal with the proceedings of Magistrates outside the Presidency towns, and not according to the law of England relating to the dealings of the superior Courts in England with the proceedings of Justices of the Peace in England.

The High Courts shall have the same powers with respect to the inquiries and charges against European British subjects as Courts of Session have with respect to inquiries and charges against other persons.

87. Proceedings against European British subjects to be regulated by this Act. All Magistrates and Courts of Session proceeding against European British subjects under this chapter, shall proceed under the provisions of this Act and not according to the law of England relating to Justices of the Peace, and all the provisions of this Act, not inconsistent with the provisions of this chapter, shall apply to such proceedings.

88. Place of confinement. European British subjects sentenced to imprisonment shall be confined in such places as the Local Government may either specially or generally appoint.

PART III.

OF THE POLICE.

CHAPTER VIII.

OFFENCES OF WHICH INFORMATION MUST BE GIVEN TO THE POLICE, AND DUTY OF THE PUBLIC.

89. All persons to give information of certain offences. Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-one A, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-four A, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven, four hundred and fifty-eight, four hundred and fifty-nine or four hnndred and sixty of the Indian Penal Code, shall in the absence of reasonable excuse, the burthen of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.

90. Landholders and others bound to report certain matters. Every Village Headman, Village Watchman, owner or occupier of land, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, is bound forthwith to communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(*a*) the residence of any notorious receiver or vendor of stolen property at the village of which he is headman or watchman, or in which he owns or occupies land, or collects rent or revenue, as the case may be;

(*b*) the resort to any place within the limits of such village of any person or persons known or reasonably suspected of being a thug or robber;

(*c*) the commission or intention to commit suttee or other non-bailable offence at or near such village;

(*d*) the occurrence of any sudden or unnatural death.

91. All persons to assist Magistrate and Police in certain cases. Every person is bound to assist a Magistrate or Police officer demanding his aid in the prevention of a breach of the peace,

or in the suppression of a riot or an affray,

or in the taking of any other person whom such Magistrate or Police officer is authorized to arrest.

CHAPTER IX.

OF ARREST WITHOUT WARRANT.

92. When Police may arrest without warrant. A Police officer may, without orders from a Magistrate and without a warrant, arrest,—

FIRST.—Any person who in the sight of such Police officer commits a cognizable offence.

SECONDLY.—Any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any such offence.

THIRDLY.—Any person against whom a hue and cry has been raised of his having been concerned in any such offence.

FOURTHLY.—Any person who has been proclaimed either under this Act, or in a District or Police Gazette, or notification.

FIFTHLY.—Any person found with property in his possession which may reasonably be suspected to be stolen property.

SIXTHLY.—Any person who obstructs a Police officer while in the execution of his duty, or who escapes from lawful custody, and

SEVENTHLY.—Any person reasonably suspected of being a deserter from Her Majesty's Army or Her Majesty's Indian Army.

93. Person charged refusing to give his name and residence. Any person known or suspected to have committed an offence for which a Police officer is not authorized to arrest without a warrant, and who refuses on demand of a Police officer to give his name and residence,

or gives a name or residence which there is reason to believe to be false,

may be detained by such Police officer for the purpose of ascertaining the name or residence of such person and with a view to future proceedings.

Arrest of vagabonds.

94. An officer in charge of a Police-station may, without orders from a Magistrate and without a warrant, arrest or cause to be arrested any person found lurking within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

or any person who is a reputed robber, housebreaker, thief, receiver of stolen property knowing it to be stolen,

or who is of notoriously bad livelihood.

Police to prevent certain offences.

95. Every Police officer shall prevent, and may interpose for the purpose of preventing, the commission of any cognizable offence.

Information of design to commit such offences.

96. Every Police officer receiving information of a design to commit any such offence, shall communicate such information to the Police officer to whom he is subordinate, and to any other officer whom it may concern to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

97. A Police officer knowing of a design to commit any such offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if the commission of the offence cannot be otherwise prevented.

Injury to public property.

98. A Police officer may, of his own authority, interpose for the prevention of any injury attempted to be committed in his view to any public property moveable or immoveable,

or to prevent the removal or injury of any public land-mark, or buoy or other mark used for navigation. If necessary such Police officer may detain the person doing such injury according to the provisions of section ninety-three

Ingress to be allowed into house entered by person of whom Police in search.

99. If there is reason to believe that any person liable to arrest under this chapter without a warrant, of whom a Police officer is in search, has entered into or is within any house or place, it shall be the duty of the person residing in or in charge of such house or place, on the demand of such Police officer, to allow ingress thereto, and all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

100. If ingress to such house or place cannot be obtained under section ninety-nine, the Police officer authorized to make the arrest shall take such precautions as may be necessary to prevent the escape of the person to be arrested and send immediate information to any Magistrate having jurisdiction.

If no warrant can be obtained without affording such person an opportunity of escape, and there is no person authorized to enter without a warrant on the spot, the Police officer may make an entry into such house or place and search therein.

Person arrested to be taken before Magistrate or officer in charge of Police-station.

101. A Police officer making an arrest under this chapter shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Procedure when Police officer deputes subordinate to arrest without warrant.

102. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested by such officer without a warrant, he shall deliver to the Police officer required to make the arrest, an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

The provisions of sections ninety-one and one hundred and seventy-six to one hundred and eighty-two (inclusive) shall apply to every order in writing issued under this section.

Police may pursue offenders into other jurisdictions.

103. For the purpose of arresting any person accused of a cognizable offence, a Police officer may pursue any such person into the limits of another Police officer whether subordinate to the same Magistrate as himself, or to the Magistrate of any other District, and whether such place be in the same Province or not.

Detention of offenders attending Court.

104. Any person attending a Criminal Court, although not upon an arrest or summons on a charge made, may be detained by such Court for the purpose of examination, for any offence which from the evidence he may appear to have committed, and may be proceeded against as though he had been arrested or summoned on a complaint made.

Of Arrest by Private Persons.

Arrest by private persons.

105. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence.

Arrest of deserters from British ships.

106. The master or mate of a British merchant ship may, either with or without the assistance of the Police, who are bound to aid if so required by such master or mate, arrest seamen or apprentices duly engaged, under the Statute 17 & 18 Vic., c. 104, or other law for the time being in force, who refuse to join or desert from the vessel in which they contracted to serve.

Such arrest shall only be made at the request and on the responsibility of such master or mate, who shall be required by the Police to accompany the arrested person, should he be apprehended, before the Magistrate having jurisdiction.

How to proceed with person arrested.

107. A private person making an arrest under this chapter shall forthwith make over the person to a Police officer, and in absence of a Police officer shall take such person to the nearest Police-station. The Police shall deal with such person according to the provisions of section ninety-two or ninety-three, as the case may be, and shall not arrest or detain him unless he appears to be liable to arrest or detention under the section applicable.

Offence committed in Magistrate's presence.

108. When any offence is committed in the presence of a Magistrate, he may order any person to arrest the offender, and may thereupon commit him to custody, or, if the offence is bailable, may admit him to bail.

CHAPTER X.

POWERS OF THE POLICE TO INVESTIGATE.

What offences Police officer may investigate.

109. An officer in charge of a Police-station may, without order of a Magistrate, investigate any offence cognizable by the Police.

What offences Police may not investigate.

110. A Police officer may not investigate an offence not cognizable by the Police without the order of a Magistrate of the 1st or 2nd class.

Saving of powers vested in Police by special or local law.

111. Nothing in section one hundred and ten shall be held to interfere with the exercise of any powers vested in a Police officer by any special or local law, or with the performance of any duty which is imposed upon a Police officer by any such special or local law.

Complaint to Police to be in writing.

112. Every complaint preferred to an officer in charge of a Police-station shall be reduced into writing, and shall be signed, sealed, or marked by the person making it; and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Local Government.

Complaint in non-cognizable cases.

113. If a complaint is preferred to an officer in charge of a Police-station of the commission within his local jurisdiction of an offence which is not cognizable by the Police, the Police officer shall enter the substance of it in the station diary, and shall refer the complainant to the Magistrate.

Upon information, &c., Police officer in charge of station to proceed in person or depute a subordinate.

114. If, from information or otherwise, an officer in charge of a Police-station has reason to suspect the commission within his local jurisdiction of an offence cognizable by the Police, he shall send immediate intimation to the Magistrate having jurisdiction, and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and apprehension of the offender.

Police officers shall investigate offences committed within the local limits of their jurisdiction, but they may investigate offences committed outside of those limits in cases in which a Magistrate might, under the provisions of chapter VI, inquire into an offence not committed within his district.

No such proceeding shall at any stage be called in question on the ground that such offence was not committed within such officer's local jurisdiction.

Preliminary inquiry.

115. Such Magistrate, on receiving intimation of the commission of any such offence, may at once proceed, or depute any Magistrate subordinate to him, to proceed to hold a preliminary inquiry into or otherwise to dispose of such case in the manner provided in this Act.

Where local investigation dispensed with.

116. Provided that, when any complaint is made against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot, unless such local investigation appears to be necessary.

Where Police officer in charge sees no sufficient ground for investigation.

117. Provided that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation or that the immediate apprehension of the accused is not necessary for the ends of justice, he shall not proceed in the case, but shall report the substance of the complaint or information for the orders of the Magistrate having jurisdiction. Such report shall be submitted through such superior officer of Police as the Local Government shall, by general or special order, in that behalf appoint. Such superior officer may give such instructions to the officer in charge of the Police-station as he deems fit, and, after recording them on such report, shall transmit the papers without delay to the Magistrate having jurisdiction.

Police officer's power to summon witnesses.

118. An officer in charge of a Police-station or other officer making an investigation may, by an order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the statement of the complainant or otherwise, appears to be acquainted with the circumstances of any case which he is investigating, and such person shall attend as required and shall answer all questions relating to such case put to him by such officer:

Provided that no person shall be bound to answer any questions tending to criminate himself.

Oral examination of witnesses by Police.

119. An officer in charge of a Police-station, or other Police officer making an investigation, may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions criminating himself.

Proviso.

No statement so reduced into writing shall be signed by the person making it, nor shall it be treated as part of the record or used as evidence.

No inducement to be offered to confess.

120. No Police officer or other person shall offer any inducement to an accused person by threat or promise or otherwise to make any disclosure or confession, whether such person be under arrest or not.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

Police not to record statement or confession.

121. No Police officer shall record any statement or any admission or confession of guilt, which may be made before him by a person accused of any offence:

Proviso.

Provided that nothing in this section shall preclude a Police officer from reducing any such statement or admission or confession into writing for his own information or guidance.

Part III, C. X, ss. 122—130.

Powers of Magistrates to record statements and confessions.

122. Any Magistrate may record any statement made to him by any person, or any confession made to him by any person, accused of an offence by any Police officer or other person. Such statements shall be recorded in the manner hereinafter prescribed for recording evidence, and such confessions shall be taken in the manner provided in sections three hundred and forty-five and three hundred and forty-six, and shall, when recorded, be forwarded to the Magistrate by whom the case is tried or inquired into. No Magistrate shall record any such confession unless, upon inquiry, he has reason to believe that it was made voluntarily, and he shall make a memorandum at the foot of any such confession to the following effect:—

"Upon inquiry I believe that this confession was voluntarily made."

(Signed) A. B.,
Magistrate.

Investigation by Police.

123. If the person arrested appears from the information obtained to have committed the offence charged, and the offence is not bailable, the officer in charge of the Police-station shall forward him under custody to the Magistrate having jurisdiction and shall bind over the complainants, if any, and all persons who appear to be acquainted with the circumstances of the case, to appear on a fixed day before such Magistrate, and to remain in attendance till otherwise directed.

When any subordinate Police officer has made any investigation under this chapter, he shall, if so required by the officer in charge of the Police-station, submit a report of such investigation to him, or he may do so without such requisition, and the officer in charge of the Police-station shall then proceed as if he had made the investigation himself.

Accused not to be detained by Police more than twenty-four hours without special authority.

124. No Police officer shall detain an accused person in custody for a longer period than, under all the circumstances of the case, is reasonable; and such period shall not, in the absence of the special order of a Magistrate, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

If the investigation has not been completed within twenty-four hours and no such special order has been passed, and if there are grounds for believing that the accusation is well founded, the officer in charge of the Police-station shall forward the accused person to the Magistrate having jurisdiction, with a statement of the offence for which he has been arrested.

A Magistrate authorizing detention under this section shall record his reasons for so doing.

If such order be given by a Magistrate other than the Magistrate of the District or of a division of a District, he shall forward a copy of his order with his reasons for making it to the Magistrate to whom he is subordinate.

Procedure of Police in case of deficient evidence.

125. If it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the transmission of the accused person to the Magistrate, such officer shall release the accused person on bail, or on his own recognizance, to appear when required, and shall submit a report of the case for the orders of the Magistrate having jurisdiction. Such report shall be submitted through the superior officer of Police, mentioned in section one hundred and seventeen, who may, pending the orders of the Magistrate, give instructions as to the conduct of the investigation.

Daily record of proceedings.

126. A Police officer making an investigation under this chapter, shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the complaint or other information reached him, the time at which he began and closed his inquiry, the place or places visited by him, and a statement of the circumstances ascertained by his inquiry.

Any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. The prisoner and his agents shall not be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police officer, the provisions of the law relating to documents used for such purposes shall apply to them.

Report of Police officer.

127. The investigation shall be completed without unnecessary delay, and, as soon as it is completed, the Police officer making the same shall forward to the Magistrate having jurisdiction a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the complaint, and the names of the persons who appear to be acquainted with the circumstances of the case and shall also send to such Magistrate any weapon or article which it may be necessary to produce before him.

The Police officer shall state whether the accused person has been forwarded in custody, or has been released on bail or on his own recognizance.

If the accused person be detained in custody, the Police officer shall state the fact and the cause of his detention.

Admission to bail.

128. A person accused of any non-bailable offence shall not be admitted to bail, if there appear reasonable ground for believing that he has been guilty of the offence imputed to him.

But a person accused of any bailable offence shall be admitted to bail, if sufficient bail be tendered for appearance before the Magistrate having jurisdiction in respect of the offence.

Bail not to be excessive.

129. The bail to be taken under section one hundred and twenty-eight shall not be excessive; and the surety or sureties shall bind himself or themselves under a specific penalty

Terms of Security.

to produce the accused person before the Magistrate on or before a fixed day, and from day to day, until otherwise directed, to answer the complaint.

Complainants and witnesses to execute recognizances to appear.

130. Every complainant and other person acquainted with the facts and circumstances of the case whose attendance before the Magistrate having jurisdiction is deemed necessary

d III, X, ss. 1–138.

by the Police officer making the investigation, shall execute a recognizance in the Form (F) given in the second schedule hereto, or to the like effect, for appearance before the Magistrate having jurisdiction in respect of the offence on a fixed day.

If the Court of the Magistrate of the District or of a Magistrate of a division of a District be inserted in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice be given to such complainant or witness.

Such day shall be the day whereon the accused person is to appear, if he has been admitted to bail, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the recognizance is executed shall, after delivering to the complainant or one of the witnesses a duplicate thereof, send it with his report to such Magistrate.

No Police officer shall, except as provided in the next following section, accompany the prosecutor or witnesses on his or their way to the Court of the Magistrate.

Complainants and witnesses not to be subjected to restraint.

131. A Police officer shall not subject any complainant or witness to restraint or unnecessary inconvenience, nor require him to give any other security for his appearance than his own recognizance.

Recusant complainant or witness may be forwarded in custody.

But if any complainant or witness refuses to attend, or to execute the recognizance directed in section one hundred and thirty, the officer in charge of a Police-station may forward him under custody to the Magistrate having jurisdiction, who may detain him in custody until he executes such recognizance, or until the hearing.

Police to report apprehensions.

132. Officers in charge of Police-stations shall report to the Magistrate of the District, or the Magistrate of a division of a District, the cases of all persons apprehended within the limits of their respective stations, or detained under section ninety-three, whether such persons have been admitted to bail or otherwise, under whatever law such persons may have been arrested.

Discharge of person apprehended.

No person who has been apprehended by a Police officer shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

Police to inquire and report on unnatural and sudden deaths.

133. The officer in charge of a Police-station, on receiving notice or information of the unnatural or sudden death of any person, shall immediately give intimation thereof to the nearest Magistrate duly authorized, and proceed to the place where the body of such deceased person is, and there in the presence of two or more respectable inhabitants of the neighbourhood, shall make investigation, and report the apparent cause of death, describing any mark of violence which may be found on the body, and stating in what manner or by what weapon or instrument such mark appears to have been inflicted.

The report shall be signed by such Police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the Magistrate of the District or to the Magistrate of a division of a District.

When there is any doubt regarding the cause of death, the Police officer shall forward the body, with a view to its being examined, to the nearest Civil Surgeon or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of putrefaction on the road.

In the Presidencies of Madras and Bombay, the Head of the village may also in like manner make the investigation and report to the nearest Magistrate authorized to entertain complaints.

Power to summon persons.

134. An officer in charge of a Police-station may, by an order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of such death. Any person so summoned shall be bound to attend and to answer all questions (other than questions which would criminate him).

If the facts do not disclose a cognizable offence to which section one hundred and twenty-seven is applicable, such persons shall not be required by the Police officer to attend a Magistrate's Court.

Inquiry into cause of such death by nearest Magistrate.

135. The nearest Magistrate duly authorized may hold an inquiry into the cause of any such death either instead of or in addition to the investigation held by the Police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence, although no specific charge has been made against any person. The Magistrate holding such an inquiry shall record the evidence taken upon it in any of the manners hereinafter prescribed, according to the circumstances of the case.

Substitute for officer in charge of Police-station during his absence or illness.

136. The powers to be exercised by an officer in charge of a Police-station under this chapter shall be exercised, in the event of his absence from the station-house or illness, by the Police officer next in rank present at the Police-station, above the rank of a constable.

Powers of superior officers of Police.

137. Officers of Police superior in rank to officers in charge of a Police-station may exercise the same powers throughout their local jurisdictions as may be exercised by officers in charge of stations within the limits of such stations.

Assistant District Superintendent of Police may exercise powers of District Superintendent.

138. For the purposes of this Act, an Assistant District Superintendent of Police may exercise any of the powers of a District Superintendent of Police subject to the control of such District Superintendent of Police, or, in absence of the District Superintendent of Police and the Assistant District Superintendent, the senior officer of Police on the spot may be directed by the Magistrate of the District to exercise the powers of a District Superintendent of Police.

Part IV, C. XI, ss. 139—150.

PART IV.

OF PROCEEDINGS TO COMPEL APPEARANCE.

CHAPTER XI.

OF COMPLAINTS TO A MAGISTRATE.

Processes.

139. Proceedings to compel the appearance before a Magistrate of persons accused or suspected of offences, who have not been arrested without warrant, may be by summons or by warrant.

When summons or warrant may be issued.

140. A summons or a warrant may be issued—

(*a.*) Upon information or report by a Police officer.

(*b.*) Upon a complaint by a private person.

(*c.*) Upon suspicion entertained by a Magistrate that an offence has been committed.

Who may entertain complaints.

141. The Magistrate of the District,

any Magistrate of a division of a District, or

any Magistrate duly empowered in that behalf in any case which he is competent to try or to commit for trial,

may entertain a complaint of an offence whether preferred directly by the complainant, or on report of a Police officer, and may issue process in the manner hereinafter prescribed to compel the appearance of persons accused of such offences.

Who may act without complaint.

142. The Magistrate of the District,

any Magistrate of a division of a District,

or any Magistrate duly empowered in that behalf,

may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Nothing in this or in the last preceding section shall be held to authorize a Magistrate to entertain a complaint of an offence without sanction where such offence, by any law in force, may not be entertained without sanction.

Who may commit for trial.

143. The Magistrate of the District,

any Magistrate of a division of a District,

any Magistrate of the 1st class, or,

any Magistrate duly empowered in that behalf,

may commit any person to the Sessions for any offence triable by such Court.

Examination of complainant.

144. When, in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made to a Magistrate, such Magistrate, if he is competent to receive such complaint, shall examine the complainant.

The examination shall be reduced into writing in a summary manner and signed by the complainant, and also by the Magistrate.

Procedure by Magistrate not empowered to hear complaint.

145. If the Magistrate be not competent to receive the complaint, he shall refer the complainant to a Magistrate having jurisdiction.

Postponement of issue of process.

146. If the Magistrate sees cause to distrust the truth of a complaint, he may postpone the issuing of process for compelling the attendance of the person complained against, and direct a previous inquiry or investigation to be made into the truth of the complaint, either by means of any officer subordinate to such Magistrate, or of a local Police officer, or in such other mode as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such inquiry or investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police officer, such person shall exercise all the powers conferred by this Act on an officer in charge of a Police-station, except that he shall have no power to make an arrest.

Dismissal of complaint.

147. The Magistrate before whom such complaint is duly made may, if in his judgment there is no sufficient ground for proceeding, dismiss the complaint.

Issue of process.

If it appears to such Magistrate that there is sufficient ground for proceeding, he shall, if the case appears to be a summons case, issue his summons, or, if the case appears to be a warrant case, his warrant, for causing the person accused to appear before himself or some other Magistrate having jurisdiction.

On complaint summons may issue.

148. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with fine only or with imprisonment for a period not exceeding six months, or both, the Magistrate may issue his summons directed to such person requiring him to appear at a certain time and place before such Magistrate to answer to the complaint.

If the Magistrate believes that the accused person is about to abscond, he may, instead of issuing a summons, issue a warrant in the first instance for the arrest of such person.

In what cases warrant may issue on complaint.

149. When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate and punishable with imprisonment for a period exceeding six months,

or when a complaint is made before any Magistrate empowered to commit persons for trial before the Court of Session that any person has committed, or is suspected of having committed, any offence triable exclusively by the Court of Session, or which in the opinion of such Magistrate ought to be tried by the Court of Session,

such Magistrate may issue his warrant to arrest such person, or, if he thinks fit, his summons requiring him to appear to answer such complaints.

Warrant to arrest if summons not obeyed.

150. If the person served with a summons does not appear before the Magistrate at the time mentioned in such summons, and the Magistrate is satisfied that such summons was duly served in what the Magistrate deems a reasonable time before the time therein appointed for appearing to the same,

or if it appears to the Magistrate that, after due diligence, the summons could not be served according to the provisions of this Act,

the Magistrate may issue his warrant to apprehend the accused person.

Magistrate may dispense with personal attendance of accused.

151. In cases, of whatever nature, in which the Magistrate thinks fit to issue a summons the Magistrate may, if he sees sufficient cause, dispense with the personal attendance of the accused person and permit him to appear by an agent duly authorized to act in his behalf.

But it shall be in the discretion of the Magistrate at any stage of the proceedings to direct the personal attendance of the accused person.

CHAPTER XII.

OF THE SUMMONS.

Form of summons.

152. Every summons issued by a Magistrate to an accused person shall be in writing (in duplicate) and shall be signed and sealed by such Magistrate, and shall be in the Form (A) given in the second schedule to this Act, or to the like effect.

Summons by whom served.

153. A summons shall ordinarily be served through a Police officer; but the Magistrate issuing the summons may, if he see fit, direct it to be served by any other person.

Summons how served.

154. The summons shall be served on the accused personally, in any district where he may be, by exhibiting one of the copies and delivering or tendering the other copy to him, or, in case the accused person cannot be found, the copy may be left for him with some adult male member of his family residing with him, and the person summoned or the person with whom the copy is left shall sign a receipt therefor.

Service when accused cannot be found.

155. When the accused person cannot be found, and there is no adult male member of his family on whom the service can be made, the serving officer shall fix a copy of the summons on some conspicuous part of the house in which the accused person ordinarily resides.

Issue of warrant in addition to summons.

156. A Magistrate may (notwithstanding the issue of such summons), either before the appearance of the accused person as required by such summons, or after default made by him so to appear, issue a warrant of arrest against such person.

Summons or warrant for offence committed beyond local jurisdiction.

157. The Magistrate of the District, a Magistrate of a division of a District, or a 1st class Magistrate duly authorized in that behalf, may issue a summons or warrant for the apprehension of any person within such District or division of a District in respect of any offence known or suspected to have been committed by such person in a different District or division of a District, or on the high seas, or in a foreign country, and for which, if committed within the jurisdiction of such Magistrate, he might issue a summons or warrant.

Provisions in this chapter as to form, service and issue of summons applicable to all summonses.

158. The provisions relating to a summons and its issue contained in this chapter, shall be applicable to every summons issued under this Act, except summonses to serve as a juror or assessor:

Provided that, when the person summoned is in the service of Government or of any Railway Company, the Court or Magistrate issuing the summons may send the summons to the head of the office in which the person summoned is employed, and such head shall thereupon cause the summons to be served on the person named therein.

CHAPTER XIII.

OF THE WARRANT.

Form of warrant.

159. Every warrant issued by a Magistrate shall be in writing, and shall be signed and sealed by such Magistrate, and shall be in the Form (B) given in the second schedule to this Act, or to the like effect.

Magistrate may direct bail to be taken.

160. It shall be in the discretion of a Magistrate, in issuing a warrant for the arrest of any person to direct by endorsement on the warrant that, if he be willing and ready to give bail in a sum to be fixed by the Magistrate for his appearance before the Magistrate to be named in the warrant on a specified day to answer the complaint, the officer to whom the warrant is directed shall accept such bail, and shall release from custody the person complained against.

Bail-bond to be forwarded.

If bail is given, the officer shall forward the bail-bond to the Magistrate.

Warrants to whom directed.

161. A warrant shall ordinarily be directed to a Police officer, but the Magistrate issuing a warrant may, if immediate execution be necessary and no Police officer be immediately available, direct it to any other person.

Warrant may be directed to landholders, &c.

162. The Magistrate of the District may direct a warrant or warrants to landholders, farmers or managers of land for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, but who has eluded pursuit.

Such landholder or other person shall acknowledge the receipt of the warrant and shall be bound to execute it should the person for whose arrest it was issued enter on or be in his estate, farm or charge.

Should the person against whom the warrant is issued be arrested, he shall be made over to the nearest Police officer with the warrant, and such Police officer shall cause such accused person to be carried before the Magistrate having jurisdiction unless bail may be and is taken under section one hundred and sixty.

Warrants directed to any person other than a Police officer.

163. When a warrant is directed to a person other than a Police officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

164. A warrant may be directed to several persons, and when so directed, may be executed by all, or by any one or more of such persons.

Warrant to several persons.

165. A warrant directed to a Police officer may also be executed by any other Police officer whose name is endorsed upon the warrant by the officer to whom the warrant is directed or endorsed.

Warrant directed to Police officer.

166. The Magistrate by whom a warrant of arrest is issued, may attend personally for the purpose of seeing that the warrant is duly executed.

Magistrate issuing warrant may superintend its execution.

The Magistrate may also at any time direct the arrest in his presence of any person for whose arrest he is competent to issue a warrant.

Arrest in presence of Magistrate.

167. A warrant issued by a Magistrate shall ordinarily be executed in the district in which it was issued.

Where warrant may be executed.

But if the person against whom the warrant is issued escapes, goes into, or is in any place out of the district in which the warrant was issued, the warrant may be executed in such place.

168. A Magistrate may direct a warrant to be executed outside his local jurisdiction either after endorsement by a Magistrate within whose local jurisdiction it is to be executed or without such endorsement.

Magistrate may issue warrant for execution in places outside his jurisdiction.

If the warrant is to be endorsed, it may be sent by post to the Magistrate within whose local jurisdiction it is to be executed and by whom it is to be endorsed.

If the warrant is not to be endorsed, it shall be entrusted to a Police officer, to be taken either to the Magistrate or to a Police officer (not below the rank of an officer in charge of a station) in whose local jurisdiction the warrant is to be executed.

169. If a warrant be executed, whether with or without endorsement, outside the district in which it was issued, the person arrested shall, unless the Magistrate who issued the warrant be within twenty miles or be nearer than the Magistrate in whose local jurisdiction the arrest was made, or unless bail be taken under section one hundred and sixty, be carried before the Magistrate in whose local jurisdiction the arrest was made.

Procedure on arrest of person against whom warrant was issued.

170. A Magistrate or Police officer to whom a warrant is directed for execution shall execute the same or cause it to be executed, and any Magistrate before whom a person is brought under the provisions of section one hundred and sixty-nine shall, if the person apprehended appear to be the person intended by the Magistrate who issued the warrant, direct his removal in custody to the Magistrate who issued the warrant,

Procedure by Magistrate before whom arrested person is brought.

or, if the offence be bailable, and he be ready and willing to give bail, shall take bail for his appearance before the Magistrate who issued the warrant, to whom the recognizance or bail-bond shall be forwarded.

In this section the word Magistrate includes a Commissioner of Police and a Magistrate of Police in the Presidency towns.

171. If any person accused of an offence not coming within section one hundred and forty-eight absconds or conceals himself, so that, upon a warrant issued against him, he cannot be found, the Magistrate having jurisdiction shall, if satisfied that he absconds or conceals himself for the purpose of avoiding the service of the warrant, issue a written proclamation, requiring him to appear to answer the complaint within a fixed period not less than thirty days.

Proclamation for person absconding.

The proclamation shall be publicly read in some conspicuous place of the town or village in which the accused person usually resides, and shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village.

A copy of the proclamation shall also be affixed on some conspicuous part of the Magistrate's Court-house.

A statement by the Magistrate to the effect that the proclamation was duly made shall be conclusive evidence of due compliance with the law.

172. The Magistrate of the District may, on a report from the Magistrate who has issued the proclamation, order the attachment of any property, moveable or immoveable, or both, belonging to the person absconding or concealing himself.

Attachment of property of person absconding.

Such order shall authorize the attachment of any property within the jurisdiction of the Magistrate by whom it was made, and it shall authorize the attachment of any property without the jurisdiction of the said Magistrate when endorsed by the Magistrate of the District in which such property is situated.

The attachment under this section shall, if the property ordered to be attached be land paying revenue to Government, be made through the Collector of the District in which the land is situate, and, in all other cases, by seizure under the order of the Magistrate of the District, or by the appointment of a manager and receiver, or by an order prohibiting the payment of rent to the absent person, as such Magistrate deems proper.

If the absent person does not appear within the time specified in the proclamation, the property under attachment shall be declared to be at the disposal of Government, but shall not be sold until the expiration of six months, unless it is of a perishable nature, or such Magistrate considers that the sale would be for the benefit of the owner.

173. When any person whose property has been declared to be at the disposal of Government under section one hundred and seventy-two, appears or is found within two years after the attachment of the property, and proves to the satisfaction of the Session or High Court trying him for the offence of which he was accused, or, if not tried in, or committed for trial for that offence to either of those Courts, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice, such property, or, if the same has been sold, the proceeds thereof, shall be restored to him.

Restoration of forfeited property.

art IV
C. XIII
XIV, ss.
—186.

174. On the arrest of a person for whose apprehension a warrant has been issued under the provisions of section one hundred and fifty-seven, in respect of an offence known or suspected to have been committed in another District or division of a District, the Magistrate who issued the warrant shall, unless he is authorized to complete the inquiry himself, send the person arrested to the Magistrate within the limits of whose jurisdiction the offence is known or suspected to have been committed, or take bail for his appearance before such Magistrate, if the offence of which such person is suspected is bailable.

Magistrate's procedure on arrest under his own warrant for offence committed out of his jurisdiction.

When the Magistrate who issued the warrant cannot satisfy himself as to the Magistrate to whom the person arrested should be sent, the case shall be reported for the orders of the High Court.

175. If the arrest was made under a warrant issued under section one hundred and fifty-seven by a Magistrate other than the Magistrate of the District, such Magistrate shall send the person arrested to the Magistrate of the District, unless the Magistrate in whose jurisdiction the offence is suspected to have been committed issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where such warrant issued by Subordinate Magistrate.

If the offence of which the person arrested is suspected has been committed in the jurisdiction of another Subordinate Court of the same District, the Magistrate who issued the warrant under section one hundred and fifty-seven shall send the person arrested to the Magistrate of the division of the district in which the offence was committed.

176. A Police officer or other person executing a warrant of arrest, shall notify the substance of the warrant to the person to be arrested, and, if required to do so, shall show the warrant to such person.

Notification of substance of warrant.

177. In making an arrest, the Police officer or other person executing the warrant shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Warrant how executed.

178. If a person against whom a warrant of arrest is issued forcibly resists the endeavour to arrest him, the Police officer or other person executing the warrant may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

179. If there is reason to believe that any person against whom a warrant has been issued has entered into, or is within, any house or place, it shall be the duty of any person residing in or in charge of such house or place, on demand of the Police officer or other person executing the warrant, to allow such Police officer or other person free ingress thereto, and to afford all reasonable facilities for a search therein.

Search of house entered by person against whom warrant issued.

180. The Police officer or other person authorized by warrant to arrest a person, may break open any outer or inner door or window of any house or place, whether that of the person accused or of any other person, in order to execute such warrant, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Breaking of door or window.

181. If information be received that a person accused of any offence for which a warrant may issue is concealed in an apartment in the actual occupancy of a woman who according to the customs of the country does not appear in public, the Police officer or other person employed to execute the warrant shall take such precautions as may be necessary to prevent the escape of the accused person.

Breaking open zenana.

If the accused person does not deliver himself up, the Police officer or other person authorized to execute the warrant may notify his authority and purpose, and demand admittance.

If after such notification and demand he cannot otherwise obtain admittance, he shall give notice to any woman as aforesaid in such apartment, not being a person against whom a warrant has been issued, that she is at liberty to withdraw, and afford her every reasonable facility for withdrawing, and may then break open the apartment and execute the warrant.

182. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

183. The officer or other person executing the warrant shall, without unnecessary delay, bring the person arrested before the Magistrate before whom he is required by this Act to produce him.

Person arrested to be brought before Magistrate.

184. No Police officer or other person shall offer to the person arrested any inducement, by threat or promise or otherwise, to make any disclosure.

Inducements to disclosure or confession.

But no Police officer or other person shall prevent the person arrested, by any caution or otherwise, from making any disclosure which he may be disposed to make of his own free will.

185. The provisions relating to a warrant and its execution contained in this chapter, shall be applicable to every warrant of arrest issued under this Act.

Provisions as to warrant and its execution and issue applicable to all warrants of arrest.

PART V.

OF INQUIRIES AND TRIALS.

CHAPTER XIV.

PRELIMINARY.

186. Every person charged before any Criminal Court with an offence may of right be defended by any barrister or attorney of a High Court, or by any pleader duly qualified under the provisions of Act No. XX of 1865, or any other law in force for the time being relating to pleaders.

Right of accused to be defended.

Part V, C. XIV and XV, ss. 187—197.

Any such person may, with the permission of the Court (but not otherwise), employ any mukhtár or other person not being a barrister, attorney, or pleader, to assist him in his defence.

Criminal Courts to be open.

187. The place in which the Court of a Magistrate is held for the trial of any complaint, or for the purpose of conducting any inquiry into any case triable by a Court of Session or the High Court or any Superior Court, and also every Court of Session and every High Court, shall be deemed an open and public Court, to which the public generally may have access, so far as the same can conveniently contain them.

But any such Court may, if it think fit, order that, during the inquiry into or trial of any particular case, no person shall have access to or be or remain in such room or building without the consent or permission of the Court.

Compounding offences.

188. In the case of offences which may lawfully be compounded, complainants may compound the offence out of Court, or in Court with the permission of the Court.

Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.

CHAPTER XV.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Procedure in preliminary inquiries.

189. The following procedure shall be adopted in inquiries before Magistrates in cases triable by a Court of Session or High Court.

Examination of complainant and witnesses for prosecution.

190. When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the evidence of the complainant and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

Examination to be in presence of accused.

191. The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his agent when his personal attendance is dispensed with and he appears by agent.

Accused may cross-examine.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses and to cross-examine the complainant and his witnesses.

Power of Magistrate to summon and examine any person.

192. The Magistrate may at any stage of the proceedings summon and examine any person whose evidence he considers essential to the inquiry, and re-call and re-examine any person already examined.

Examination of accused.

193. The Magistrate may from time to time, at any stage of the inquiry and without previously warning the accused person, examine him, and put such questions to him as he considers necessary.

The accused person shall not render himself liable to punishment for refusal to answer such questions, but the Magistrate shall draw such inference as may to him seem just from such refusal.

EXPLANATION.—The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other offences his replies may tend to show he has committed.

Adjournment of inquiry and remand.

194. If from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time adjourn the inquiry, and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days:

Provided that, instead of detaining the accused person in custody during the period for which he is so remanded, the Magistrate may discharge him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before the Magistrate at the time and place appointed for the continuance of such examination.

When accused person to be discharged.

195. When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under chapter XVI or XVII of this Act.

EXPLANATION I.—The absence of the complainant, except when the offence may lawfully be compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

EXPLANATION II.—A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be made until the evidence of the witnesses named for the prosecution has been taken.

When accused is to be committed for trial.

196. When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court as the case may be.

When commitment to be to a High Court.

197. If the accused person (not being a European British subject)

has committed an offence conjointly with a European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge,

and the evidence appears to justify the Magistrate in sending the accused person for trial,

Part V, Ch. XVI ss. 198—209.

he shall commit such accused person to take his trial before such High Court and not before a Court of Session, and such High Court shall have jurisdiction to try such person.

Contents of charge.

198. When the Magistrate determines to send the accused person before the Court of Session or High Court for trial, he shall make a written instrument under his hand and seal, declaring with what offence the accused person is charged, and shall direct him to be tried by such Court on such charge. He shall also record his reasons for committing such accused person.

Copy of charge.

A copy of such instrument shall be forwarded with the record of the original inquiry to the Court of Session before which the accused person is to be tried, and a copy shall also be sent to the public prosecutor or to the officer appointed to conduct the prosecution.

Any weapon or other article of property necessary to produce in evidence shall also be transmitted.

When a commitment is made to the High Court, such instrument, record, and such weapon or other article shall be forwarded to the Clerk of the Crown or other officer appointed by the Court, and if any part of such record is not in English, a translation thereof in English shall be forwarded therewith.

Copy of charge to be furnished to accused.

199. As soon as the charge on which the accused person is to be tried has been prepared, it shall be read and explained to him, and a copy or translation thereof shall be furnished to him, if he so require.

List of witnesses for defence on trial.

200. The accused person shall be required at once to give in, orally or in writing, a list of witnesses whom he may wish to be summoned to give evidence on his trial before the Court of Session or High Court.

Further list.

It shall be in the discretion of the Magistrate, subject to the provisions of section three hundred and fifty-nine, to allow the accused person to give in any further list of witnesses at a subsequent time.

Copies of depositions to be furnished to accused.

201. When the inquiry is concluded, the accused person shall, if he demands them at a reasonable time before the trial, be furnished with copies of the depositions. Such copies shall be made at his expense unless the Magistrate see fit to give them free of cost.

When commitment made, Magistrate to give notice to Government prosecutor.

202. When the accused person is committed to take his trial before the Court of Session or High Court, the Magistrate shall issue an order to the public prosecutor, Government Pleader or other person appointed by the Government to conduct prosecutions before the Court of Session or High Court, notifying such commitment, and stating the offence in the same form as the charge.

Nothing in this section shall preclude the Magistrate of the District in a case committed to the Court of Session, if he thinks fit, from appointing a person other than such Government Pleader or officer to conduct the prosecution.

CHAPTER XVI.

OF THE TRIAL OF SUMMONS CASES BY MAGISTRATES.

Procedure in summons cases.

203. The following procedure shall be observed in the trial of summons cases.

Accused person may be admitted to bail or allowed to be at large on his personal recognizance.

204. If upon the day appointed, the accused person appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the Magistrate by virtue of a warrant or otherwise, it shall be at the discretion of the Magistrate to admit him to bail, or allow him to be at large upon his personal recognizance, as the Magistrate directs.

If the accused person cannot give bail, when required to do so, he shall be committed to custody.

Non-appearance of complainant.

205. If upon the day appointed for the appearance of the accused person, or any day subsequent thereto on which the case may be called on, the complainant does not appear, the Magistrate shall dismiss the complaint, unless for some reason he thinks proper to adjourn the hearing of the same to some other day, upon such terms as he thinks fit.

Substance of complaint to be stated.

206. On the appearance of both parties on the day fixed for the trial, the substance of the complaint shall be stated to the accused person, and he shall be asked if he has any cause to show why he should not be convicted.

Conviction on admission of truth of complaint.

If the accused person admit the truth of the complaint, and show no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

Procedure when no such admission is made.

207. If the accused person do not admit the truth of the complaint, the Magistrate shall proceed to hear the complainant and such witnesses as he produces in support of his complaint, and also to hear the accused person and such witnesses as he produces in his defence.

Adjournment.

208. Before or during the hearing of any complaint, the Magistrate may adjourn the hearing of the same to a day to be then appointed and stated in the presence and hearing of the party or parties.

If on the day to which such hearing or such further hearing has been so adjourned, the accused person does not appear, the Magistrate may issue his warrant for the arrest of such person.

If the complainant does not appear the Magistrate may dismiss the complaint.

Compensation in cases of frivolous or vexatious complaints.

209. A Magistrate may dismiss the complaint as frivolous or vexatious, and may, in his discretion, by his order of dismissal, award that the complainant shall pay to the accused person such compensation, not exceeding fifty rupees, as to such Magistrate seems just and reasonable.

In such cases, if more persons than one are accused, the Magistrate may in like manner award compensation not exceeding fifty rupees to each of them.

Recovery of such compensation.

The sum so awarded shall be recoverable by distress and sale of the moveable property belonging to the complainant, which may

Part V, C. XVI—XVIII ss. 210—222.

be found within the jurisdiction of the Magistrate of the District, and such order shall authorize the distress and sale of any moveable property belonging to the complainant without the jurisdiction of the Magistrate of the District when the order has been endorsed by the Magistrate of the District in which such property is situated, and, in default of such distress, by imprisonment of the complainant in the civil jail, for any time not exceeding thirty days, unless such sum is sooner paid.

Withdrawal of complaint.

210. If a complainant at any time before a final order is passed in any case under this chapter satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw it.

A complaint withdrawn under this section shall not again be entertained.

Acquittal.

211. If the Magistrate, in any case tried under this chapter, finds the accused person not guilty, he shall record a judgment of acquittal.

Sentence.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

When the personal attendance of the accused person during the trial has been dispensed with, the sentence of the Magistrate, if the sentence be for fine only, may be pronounced in the presence of the agent, if the accused person has been permitted to appear by agent, or the accused person may be required to attend to hear such sentence.

Effect of dismissal.

212. The dismissal of a complaint under this chapter shall operate in like manner as the acquittal of the accused person.

CHAPTER XVII.

OF THE TRIAL OF WARRANT CASES BY MAGISTRATES.

Procedure in warrant cases.

213. The following procedure shall be observed by Magistrates in the trial of warrant cases.

Sections 190 to 194 to apply.

214. The provisions of sections one hundred and ninety to one hundred and ninety-four (both inclusive) shall apply to trials conducted under this chapter.

Discharge of accused.

215. When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers necessary, have been taken, the Magistrate, if he finds that no offence has been proved against the accused person, shall discharge him.

EXPLANATION I.—The absence of the complainant, except where the offence may be lawfully compounded, shall not be deemed sufficient ground for a discharge, if there appears other evidence sufficient to substantiate the offence.

EXPLANATION II.—A discharge is not equivalent to an acquittal and does not bar the revival of a prosecution for the same offence.

EXPLANATION III.—An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.

Charge to be drawn when offence is apparently proved.

216. If the Magistrate finds that an offence is apparently proved against the accused person, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall prepare in writing a charge against the accused person.

EXPLANATION I.—The omission to prepare a charge shall not invalidate the trial, if, in the opinion of the Court of appeal or revision, the accused person has not been prejudiced.

EXPLANATION II.—If the Court of appeal or revision thinks that the accused person has been prejudiced by an omission to prepare a charge, it shall order the trial to be recommenced from the point at which the charge should have been drawn up.

Plea.

217. The charge shall then be read and explained to the accused person, and he shall be asked whether he is guilty or has any defence to make.

Defence.

218. If the accused person have any defence to make to the charge, he shall be called upon to enter upon the same, and to produce his witnesses if in attendance, and shall be allowed to recall and cross-examine the witnesses for the prosecution.

Evidence for the defence.

219. The Magistrate shall, subject to the provisions of section three hundred and sixty-two, summon any witness and examine any evidence that may be offered in behalf of the accused person, to answer or disprove the evidence against him, and may for this purpose, at his discretion, adjourn the trial from time to time, as may be necessary.

Acquittal.

220. If the Magistrate finds the accused person not guilty, he shall record judgment of acquittal.

Conviction.

If the accused person is convicted, the Magistrate shall pass sentence upon him according to law.

How the Magistrate is to proceed when, after commencement of trial, he finds the case beyond his jurisdiction.

221. In any trial before a Magistrate, in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or one which, in the opinion of such Magistrate, ought to be tried by the Court of Session or High Court, the Magistrate shall stop further proceedings under this chapter, and shall commit the prisoner under the provisions hereinbefore contained. If such Magistrate is not empowered to commit he shall proceed under section forty-five.

CHAPTER XVIII.

OF SUMMARY TRIALS.

What offences may be tried summarily.

222. The Magistrate of the District may try the following offences in a summary way, and, on conviction of the offender, may pass such sentence as may be lawfully inflicted under section twenty of this Code:—

(1). Offences referred to in section one hundred and forty-eight of this Code.

(2). Offences relating to weights and measures under sections two hundred and sixty-four, two

Part V, XVIII & XIX, ss. 223—233.

hundred and sixty-five, and two hundred and sixty-six of the Indian Penal Code.

(3). Hurt under section three hundred and twenty-three of the Indian Penal Code.

(4). Theft under section three hundred and seventy-nine of the Indian Penal Code, where the property stolen does not exceed fifty rupees in value.

(5). Theft under section three hundred and eighty of the Indian Penal Code, where the property stolen does not exceed fifty rupees in value.

(6). Theft under section three hundred and eighty-one of the Indian Penal Code, where the property stolen does not exceed fifty rupees in value.

(7). Receiving stolen property under section four hundred and eleven of the Indian Penal Code.

(8). Mischief under section four hundred and twenty-seven of the Indian Penal Code.

(9). House-trespass under section four hundred and forty-eight of the Indian Penal Code.

(10). Criminal intimidation under sections five hundred and four and five hundred and six of the Indian Penal Code.

Power to invest Magistrates with power to try summarily.

223. The Local Government may invest any Magistrate of the 1st class with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

Power to invest Bench of Magistrates exercising 1st class magisterial powers.

224. The Local Government may invest any Bench of Magistrates exercising the powers of a Magistrate of the 1st class, with power to try summarily all or any of the offences mentioned in section two hundred and twenty-two.

Power to invest Bench of Magistrates exercising less power.

225. The Local Government may invest any Bench of Magistrates exercising the powers of a Magistrate of the 2nd or 3rd class with power to try summarily all or any of the following offences:—

Offences coming within sections two hundred and seventy-seven, two hundred and seventy-eight, two hundred and seventy-nine, two hundred and eighty-five, two hundred and eighty-six, two hundred and eighty-nine, two hundred and ninety, two hundred and ninety-two, two hundred and ninety-three, two hundred and ninety-four, three hundred and twenty-three, three hundred and thirty-four, three hundred and thirty-six, three hundred and forty-one, three hundred and fifty-two, four hundred and twenty-six, and four hundred and forty-seven of the Indian Penal Code; any offences against Municipal Acts, and the Conservancy Clauses of Police Acts punishable with fine or with imprisonment not exceeding one month.

Procedure for summons and warrant cases applicable with certain exceptions.

226. In trials under this chapter the provisions of this Code in regard to summons cases shall be followed in respect of summons cases, and the procedure for warrant cases in respect of warrant cases, with the exceptions hereinafter provided.

Record in cases where there is no appeal.

227. In cases where no appeal lies, the Magistrate need not record the evidence of the witnesses nor the reasons for passing the judgment, nor draw up a formal charge, but he shall enter in a register, to be kept for the purpose, the following particulars:—

(*a*) The serial number;

(*b*) The date of the commission of the offence;

(*c*) The date of the report or complaint;

(*d*) The name of the complainant;

(*e*) The name, parentage and residence of the accused person;

(*f*) The offence complained of or proved;

(*g*) The prisoner's plea;

(*h*) The finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) The sentence; and

(*j*) The date on which the proceedings terminated.

Record in appealable cases.

228. If a Magistrate or Bench of Magistrates acting under section two hundred and twenty-two passes a sentence of more than three months' imprisonment, or of fine exceeding two hundred rupees;

or if a Bench of Magistrates, acting under section two hundred and twenty-five, convicts any person,

such Magistrate or Bench of Magistrates shall, before passing sentence, record a judgment embodying the substance of the evidence on which the conviction was had, and also the particulars mentioned in section two hundred and twenty-seven.

Such judgment shall be the only record in cases coming within this section.

Language of judgment.

229. Records made under section two hundred and twenty-seven and judgments recorded under the provisions of section two hundred and twenty-eight shall be written by the presiding officer, either in English or in the language of the district in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.

Bench of Magistrates may be empowered to employ Clerk.

230. The Local Government may authorize any Bench of Magistrates to prepare the aforesaid record or judgment by means of an officer of such Court, and the record or judgment so prepared shall be signed by each member of the Bench present conducting the proceedings.

CHAPTER XIX.

TRIAL BY COURT OF SESSION.

Cognizance of offences by Court of Session in original jurisdiction.

231. Except in the cases referred to in section four hundred and seventy-two, no Court of Session shall take cognizance of any offence as a Court of original criminal jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf.

Trials to be by jury or with assessors.

232. All trials before the Court of Session shall be either by jury, or conducted with the aid of two or more assessors.

Local Government may order trials before Court of Session to be by jury.

233. The Local Government may order that the trial of all offences, or of any particular class of offences, before any Court of Session shall be by jury in

Part V, C. XIX; ss. 234—246.

any District, and such Local Government may from time to time revoke or alter such order.

Orders passed under this section shall be published in the official Gazette, and in such other manner as the Local Government from time to time directs.

EXPLANATION.—If an offence triable with assessors is tried by a jury, the trial shall not be invalid. If an offence triable by a jury is tried with assessors, the trial shall not be invalid, unless objection be taken before the Court records its finding.

Jury for trial of Europeans or Americans.

234. Criminal trials before the Court of Session in which a European (not being a European British subject) or an American is the accused person, or one of the accused persons, shall be by jury.

In such case the jury, if such European or American desire it, shall consist of at least one-half of Europeans (whether European British subjects or not) or Americans, if such a jury can be procured:

Election to be tried without jury.

Provided that, in any District in which the Local Government has not ordered that all trials, or trials for all offences of the class within which the trial about to take place falls, shall be by jury, such European or American may elect to be tried without jury.

Trial before Court of Session to be conducted by Government Pleader.

235. In every trial before a Court of Session, the prosecution shall be conducted by the Public Prosecutor, Government Pleader or by some other officer specially empowered by the Magistrate of the District in that behalf.

Number of jury.

236. In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three nor more than nine, as the Local Government, by any general order applicable to any particular District or to any particular classes of offences in that District, directs.

Commencement of trial.

237. When the Court is ready to commence the trial, the accused person shall be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused person pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Refusal to plead or claim to be tried.

238. If the accused person refuses to plead, or claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case.

Assessors how chosen.

239. When the trial is to be with assessors, the assessors shall be chosen, as the Judge thinks fit, from the persons summoned to act as assessors.

Jurors to be chosen by lot.

240. When the trial is to be by jury, the jury shall be chosen by lot from the persons summoned to act as jurors.

Jury for trial of persons not Europeans or Americans.

241. In a trial by jury before the Court of Session of a person not being a European or an American, at least one-half of the jury, if the accused person desire it, shall consist of persons who are neither Europeans nor Americans.

Jury when European or American charged jointly with one of another race.

242. In any case before the Court of Session, in which a European or American is charged jointly with a person of any other race, such other person shall, if he desire it, be tried separately if the European or American claims to be tried by a jury consisting of at least one-half of Europeans and Americans.

Names of jurors to be called.

243. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused person shall be asked if he objects to be tried by such juror.

Objections to jurors.

Objection may then be made to such juror by the accused person or by the Public Prosecutor, Government Pleader, or other person appointed to conduct the prosecution, and the grounds of objection shall be stated.

Any objection made to a juror shall be decided by the Court, and the decision of the Court shall be final.

If an objection be allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons, or, if there be no such juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided no objection to such juror or other person be made and allowed.

Grounds of objection.

244. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(1) any ground of disqualification within section four hundred and five;

(2) standing in the relation of husband, master or servant, landlord or tenant, to the person alleged to be injured or attempted to be injured by the offence charged, or to the person on whose complaint the prosecution was instituted, or to the person accused;

(3) being in the employment of either of such persons;

(4) being plaintiff or defendant against either of such persons in any civil suit;

(5) having complained against, or having been accused by, either of such persons in any criminal prosecution;

(6) any circumstance which, in the judgment of the Court, is likely to cause prejudice against, or favour to, either of such persons, or which renders such person improper as a juror.

Juror to understand the language in which evidence is given or interpreted.

245. The Judge shall not allow any person to serve on the jury, unless such person understands the language in which the evidence is given or interpreted.

Foreman of jury.

246. When the jury has been completed, they shall appoint one of their number to be foreman.

It shall be the duty of the foreman to preside in the debates of the jury, to deliver the verdict of the jury, or to ask any information from the Court that may be required by the jury.

If a majority do not agree in the appointment of a foreman, he shall be named by the Court.

Part V, XIX, ss. 247—257.

247. The witnesses shall then be examined, cross-examined and re-examined according to the law for the time being relating to the examination of witnesses.

Examination of witnesses.

248. The examination of the accused person before the committing Magistrate shall be given in evidence at the trial.

Examination of accused before Magistrate to be evidence.

249. When a witness is produced before the Court of Session, or High Court, the evidence given by him before the committing Magistrate may be referred to by the Court, and the Court may, if it think fit, ground its judgment thereon, although the witnesses may at the trial make statements inconsistent therewith.

Evidence given at the preliminary inquiry admissible.

EXPLANATION.—This section shall not authorize the Court to refer to the record of the evidence given by a witness who is absent except in the cases in which such evidence may be referred to under the Indian Evidence Act or other law in force for the time being upon the subject of evidence.

250. The Court may from time to time at any stage of the trial, examine the accused person, and shall question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

Examination of accused.

251. When the examination of the witnesses for the prosecution and the examination of the accused person is concluded, the accused person shall be asked whether he means to call witnesses. If he says that he does not, the prosecutor may sum up his case. The Court may then, if it thinks that there are no grounds for proceeding,

Defence.

in a case tried with assessors, record a finding, or, in a case tried by a jury, instruct the jury to return a verdict of acquittal.

If the Court consider that there are grounds for proceeding, it shall call on the accused person to state his grounds of defence and produce his witnesses.

The accused person or his Counsel or Agent may then state the case for the defence, and may examine the witnesses, if any, produced for the defence, and at the conclusion of such examination may sum up his case.

252. If any evidence is adduced on behalf of the accused person, the officer conducting the prosecution shall be entitled to reply.

Prosecutor's right of reply.

253. Whenever, in the opinion of the Court, it is proper and convenient that the jury or assessors should view the place in which the offence charged is said to have been committed, or any other place in which any other transaction material to the inquiry in the trial took place, an order shall be made to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to the place which shall be shown to them by a person appointed by the Court.

View by jury or assessors.

Such officer shall not suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and they shall, when the view is finished, be immediately conducted back into Court.

254. If, in the course of a trial by jury at any time prior to the finding, any juror, from any sufficient cause, is prevented from attending through the trial,

Procedure when juror becomes unable to attend.

or if any juror absents himself, and it is not possible to enforce his attendance,

a new juror shall be added, or the jury shall be discharged, and a new jury empanelled, and in either case the trial shall commence anew.

255. When the case for the defence and the prosecutor's reply, if any, are concluded, the Court shall proceed—

Assessors' opinion and charge to jury.

in cases tried with assessors, to ask the assessors their opinion, and shall record it:

in cases tried by jury, to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

A statement of the Judge's direction to the jury shall form part of the record.

256. It is the duty of the Judge to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by parties or their agents which may arise in the course of the trial; and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties;

Duty of Judge.

to decide upon the meaning and construction of all documents given in evidence at the trial;

to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact relevant to the proceeding.

Illustrations.

(*a.*) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge and not for the jury to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document, the original of which has been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

257. It is the duty of the jury—

Duty of jury.

(1) to decide upon all questions of fact submitted to them by the Judge at the trial, being guided in such decision by the statement of the law given to them by the Judge;

(2) to determine the meaning of all technical terms and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(3) to decide all questions declared by the Indian Penal Code, or any other law to be questions of fact;

Part V §§ VI, C. XIX §§ XX, ss. 258—269.

(4) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(a.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point. Whether work was done with reasonable skill, or due diligence.

Each of these is a question for the jury.

When juryman or assessor may be examined.

258. If a juryman or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be examined in the same manner as any other witness.

Procedure when assessor is unable to attend.

259. If, in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending through the trial, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending through the trial, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

Jury or assessors to attend at adjourned sitting.

260. If a trial is adjourned, the jury or assessors shall be required to attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Cases tried with assessors.

261. In cases tried with assessors, the Court shall proceed to pass judgment of acquittal or conviction, having considered the opinions of the assessors, but not being bound to conform to them. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

Decision vested in Judge.

262. The opinion of each assessor shall be given orally and shall be recorded in writing by the Court, but the decision is vested exclusively in the Judge.

Cases tried by juries.

263. In cases tried by jury, the jury may retire to consider their verdict. It shall be the duty of an officer of the Court not to suffer any person to speak to or hold any communication with any member of such jury. When the jury have considered their verdict, the foreman shall inform the Court what is their verdict, or what is the verdict of a majority.

Procedure where jury differ.

If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

If the Court does not think it necessary to dissent from the verdict of a majority of the jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law. If the Court disagrees with the verdict of the jurors or of a majority of such jurors, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court, and may either remand the prisoner to custody or admit him to bail.

The High Court shall deal with the case so submitted as with an appeal, and if it convicts the accused person, it shall pass such sentence as might have been passed by the Court of Session.

Adjournment.

264. The Court may, in its discretion, postpone the hearing of the case, and may from time to time adjourn the trial, if it considers that such adjournment is proper and will promote the ends of justice.

Postponement of trial.

The same jury or assessors may try in succession several offenders.

265. The same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as to the Court seems fit.

PART VI.

APPEAL, REFERENCE, AND REVISION.

CHAPTER XX.—APPEALS.

Appeals from officers exercising powers less than those of a Magistrate of the 1st class.

266. Any person convicted on a trial held by any Magistrate of the 2nd or 3rd class, may appeal to the Magistrate of the District or to a Magistrate of the 1st class who has been empowered by the Local Government to hear such appeals.

Appeals in bad livelihood cases.

267. Any person required by a Magistrate of the 1st class to give security for good behaviour under section five hundred and four or section five hundred and five may appeal to the Magistrate of the District.

Appeals from convictions by Civil Courts.

268. Any person convicted by any Civil, Criminal, or Revenue Court under Chapter XXXII of this Act, may appeal to the Court to which decrees or orders made in such Court are ordinarily appealable, subject to the rules provided in sections two hundred and seventy-five, two hundred and seventy-seven, two hundred and seventy-eight, two hundred and eighty, two hundred and eighty-one and two hundred and eighty-two.

An appeal from such conviction by a Small Cause Court may be made to the Court of Session within whose Sessions Division such Court is situate.

Appeal from Magistrates.

269. Any person convicted on a trial held by the Magistrate of the District or other Magistrate of the 1st class may appeal to the Court of Session.

The appellant shall in every case give notice of appeal to the Magistrate of the District, who shall, if necessary, instruct the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate to prosecute the case.

Appeals by persons convicted by officers invested under section 36.

270. Any person convicted on a trial held by any officer invested with the power described in section thirty-six, may appeal to the High Court, if it appear from the sentence awarded that such officer was in such trial exercising such special powers. No appeal in such case shall lie to the Court of Session.

Appeals from convictions of Assistant Sessions Judges.

Any person convicted by an Assistant Sessions Judge may appeal to the Sessions Judge if the sentence appealed against does not exceed three years' imprisonment.

A sentence of an Assistant Sessions Judge confirmed, under section eighteen, by the Sessions Judge may be appealed to the High Court.

Appeals by persons convicted by Session Court.

271. Any person convicted on a trial held by a Sessions Judge may appeal to the High Court.

The appeal may be on a matter of fact as well as on a matter of law.

If the conviction was in a trial by jury, the appeal shall be admissible on a matter of law only.

If the person be sentenced to death, the Session Court shall inquire whether he wishes to appeal, and if the convict signifies his intention to appeal, the Court shall delay the transmission of the reference, hereinafter required, for a reasonable time, not exceeding seven days, to allow of the appeal and reference being made at the same time.

When it appears that the execution of the sentence should not be delayed, the Session Court may record its reasons and forward the reference at once.

In no case requiring confirmation shall the High Court grant a longer delay than is herein allowed, and where the reasons given by the Session Court are sufficient, the High Court shall decide the case in the absence of an appeal.

No appeal in case of acquittal, except on behalf of Government.

272. The Local Government may direct an appeal by the Public Prosecutor or other officer specially or generally appointed in this behalf from an original or appellate judgment of acquittal in any case which might have been appealed by the person convicted had a conviction been had; but in no other case shall there be an appeal from a judgment of acquittal passed in any Criminal Court.

Such appeal shall lie to the High Court, and the rules of limitation shall not apply to appeals presented under this section.

The High Court may direct a new trial by another Court, or may pass such judgment, sentence or order as may be warranted by law.

No appeal in petty cases.

273. There shall be no appeal in cases in which a Court of Session, or the Magistrate of a District or other Magistrate of the 1st class, passes a sentence of imprisonment not exceeding one month, or of fine not exceeding fifty rupees, or of whipping.

There shall be no appeal from a sentence of imprisonment passed by such Court or officer in default of payment of fine when no substantive sentence of imprisonment has been passed.

Appeals from summary convictions.

274. There shall be no appeal in cases tried summarily in which a Magistrate of the District, or a Magistrate or bench of Magistrates of the 1st class, empowered to act under section two hundred and twenty-two, passes a sentence of imprisonment not exceeding three months, or of fine not exceeding two hundred rupees, or of whipping.

Copy of sentence to accompany petition.

275. Every petition of appeal shall be accompanied by a copy of the judgment or order appealed against.

Copy of sentence or order to be furnished.

276. A copy of the judgment or other order passed by any Criminal Court, and, in cases tried by jury, of the Judge's charge to the jury, shall be furnished without delay on the application of any person affected by such sentence or order.

Such copy shall be made at the expense of the person applying for it, unless he is in jail or unless the Court, for some special reason, sees fit to grant such copy free of expense.

Procedure where appellant in jail.

277. If the party appealing be in jail, he shall be at liberty to present his petition of appeal and the copy of the judgment or order appealed against to the Magistrate or other officer in charge of the jail, who shall thereupon forward the petition to the proper appellate authority.

Rejection of appeal.

278. The Appellate Court shall fix a reasonable time within which the appellant or his counsel or authorized agent may appear, and it may reject the appeal if, on a perusal of the petition of appeal and the copy of the judgment or order appealed against, and after hearing the appellant or his counsel or authorized agent, if he appears, it considers that there is no sufficient ground for questioning the correctness of the decision or for interfering with the sentence or order appealed against.

Before rejecting the appeal, the Court may call for and peruse all or any part of the proceedings of the lower Court, but shall not be bound to do so.

Notice of appeal.

279. If the Appellate Court decide to hear the appeal, it shall cause notice to be given to the appellant, and, if the appeal be to the Session or High Court, shall also give notice to the Magistrate of the District, who shall inform, if necessary, the Public Prosecutor, Government Pleader or other officer empowered by Government on that behalf, of the day on which such appeal will be heard.

Appellate Court may alter or reverse finding and sentence, or enhance a sentence.

280. The Appellate Court, after perusing the proceedings of the lower Court, and after hearing the appellant, his counsel or agent, if they appear, and the Public Prosecutor, Government Pleader or other officer empowered by Government or by the Magistrate of the District in that behalf, if he appears, may alter or reverse the finding and sentence or order of such Court, and may, if it see reason to do so, enhance any punishment that has been awarded:

Provided that if the appeal is from the sentence of a Magistrate of any class the appellate Court shall not inflict a greater punishment than might have been inflicted by a 1st class Magistrate.

Suspension of sentence pending appeal.

281. In any case in which an appeal is allowed, the Appellate Court may, pending the appeal, order that the sentence be suspend-

ed, and if the appellant be in confinement for an offence which is bailable, may order that he be released on bail.

Release of appellant on bail.

282. In any case in which an appeal has been allowed, the Appellate Court, if it think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the appellant to be necessary, may either make such further inquiry and take such additional evidence itself or may direct such inquiry to be made and additional evidence to be taken.

Appellate Court may make or direct further inquiry.

When the evidence has not been taken before itself, the result of the further inquiry and the additional evidence shall be certified to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the presence of the appellant may be dispensed with when the further inquiry is made or evidence taken.

The provisions of this Act relating to summoning and enforcing the attendance of witnesses and their examination shall, so far as may be, apply to witnesses examined under this section.

283. No finding or sentence passed by a Court of competent jurisdiction shall be reversed or altered on appeal on account of any error or defect, either in the charge or in the proceedings on or before trial, unless such error or defect has occasioned a substantial miscarriage of justice, either as affecting the due conduct of the prosecution, or as prejudicing the prisoner in his defence.

Finding or sentence when reversible by reason of error or defect in charge or proceedings.

In case the accused person has been sentenced to a larger amount of punishment than could have been awarded for the offence which, in the judgment of the Appellate Court, is proved by the evidence, the Appellate Court may reduce the punishment within the limits prescribed by the Indian Penal Code or any law for the time being in force for such offence.

Appellate Court may reduce punishment.

284. When any Court has convicted a person of an offence not triable by such Court, the Appellate Court shall annul the conviction and sentence of such Court, and direct the trial of the case by a Court of competent jurisdiction.

Procedure in case of conviction by Court not having jurisdiction.

285. Except as provided in sections two hundred and seventy-two and two hundred and ninety-seven, sentences and orders passed by an Appellate Court upon appeal shall be final.

Finality of orders on appeal.

286. Unless otherwise provided by this Act or by any other law for the time being in force, no appeal shall lie from any order or sentence of a Criminal Court.

Unless otherwise provided, no appeal to lie from order or sentence of Criminal Court.

CHAPTER XXI.—REFERENCE.

287. If the Court of Session pass sentence of death, the sentence shall not be executed without the confirmation of the High Court.

Sentence of death.

If the accused person is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed.

288. In any case so referred, whether tried with assessors or by jury, the High Court may either confirm the sentence or pass any other sentence warranted by law, or may annul the conviction and order a new trial on the same or an amended charge or may acquit the accused person.

Power of High Court to confirm sentence or annul conviction.

289. If the Court think further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, it may direct such inquiry to be made, or such additional evidence to be taken.

Power to direct further inquiry, &c.

The result of the further inquiry and the additional evidence shall be certified to the High Court, and the High Court shall thereupon proceed to pass judgment of acquittal, or such sentence as it thinks fit.

290. In every case so referred to the High Court, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall be determined and signed by at least two Judges of the Court.

Confirmation or new sentence to be signed by two Judges.

291. When the High Court of reference, revision, or appeal, in any part of the territories to which this Code has been extended as aforesaid, consists of a single Judge, he shall have all the powers conferred upon two or more Judges of the High Court by this chapter.

When High Court consists of one Judge.

CHAPTER XXII.—SUPERINTENDENCE AND REVISION.

292. The High Court may make and issue general rules for regulating the practice and proceedings of that Court and of all Criminal Courts subordinate to it,

Power to High Court to make rules, &c.

for keeping all books, entries, and accounts to be kept in such Courts, and

for the preparation and transmission of any calendars or statements to be prepared and submitted by such Courts,

and may also frame forms (when not prescribed by this Act) for every proceeding in the said Courts for which it thinks that a form should be provided,

and from time to time may alter any such rule or form:

Provided that such rules and forms be not inconsistent with the provisions of this Act, or of any other law in force.

All rules framed by the Court, all repeals and alterations thereof under this section shall be published in the official Gazette.

293. All Subordinate Courts shall send to the High Court such periodical statements or calendars of trials held by such Courts as the High Court prescribes, exhibiting the offences charged, the offences of which the accused persons are convicted, and the sentences or orders passed upon them.

Calendars of trials by Subordinate Courts.

Ss. VII XII & Ss. 294 301.

294. The High Court may call for and examine the record of any case tried by any Subordinate Court for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed, and as to the regularity of the proceedings of such Court.

Power to call for records of Subordinate Courts.

295. Any Court of Session or Magistrate of the District may, at all times, call for and examine the record of any Court subordinate to such Court or Magistrate, for the purpose of satisfying itself or himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such Subordinate Court.

Powers of Court of Session and Magistrate to call for record of Subordinate Courts.

296. If the Court of Session or Magistrate of the District is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court:

Reference to High Court.

Provided that in committable cases if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed or discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial.

297. If in any case either called for by itself, or reported for orders or which comes to its knowledge, it appears to the High Court that there has been a material error in the proceedings of the Court below, it shall pass such order thereon as it thinks fit.

Powers of revision.

If it considers that a complaint has been improperly dismissed or discharged, it may order the accused person to be committed;

Power to order commitment.

If it considers that the charge has been inconveniently framed, and that the facts of the case show that the prisoner ought to have been convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence of which he ought to have been convicted,

Power to alter finding and sentence.

Provided that if the error in the charge appears materially to have misled and prejudiced the accused person in his defence, the High Court shall annul the conviction and remand the case to the Court below with an amended charge, and the Court below shall thereupon proceed as if it had itself amended such charge.

Proviso to power of altering finding.

If the High Court considers that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the trial and order a new trial before a competent Court.

Power to annul conviction.

If it considers that the sentence passed on the accused person is one which cannot legally be passed for the offence of which the accused person has been convicted, or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law.

Power to annul improper and to pass proper sentence.

If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted by law; if it considers that the sentence is inadequate, it may pass a proper sentence.

The High Court may, whenever it thinks fit, order that the sentence in any case coming before it as a Court of Revision be suspended; that any person imprisoned under such order be released on bail, if the offence for which such person has been imprisoned be bailable.

Suspension of sentence.

Except as provided in sections three hundred and twenty-eight and three hundred and ninety-eight, no Court other than the High Court shall alter any sentence or order of any Subordinate Court except upon appeal by the parties concerned.

Powers of revision confined to High Court.

In exercising its powers of Revision it shall be in the discretion of the High Court to hear any person interested in the matter.

Exercise of Revisional jurisdiction optional.

298. The High Court, the Court of Session and the Magistrate of the District may order any subordinate Court to inquire into any complaint which has been dismissed under section one hundred and forty-seven.

Courts may order inquiry.

299. Whenever a case is revised by the High Court under this chapter, it shall certify its decision or order to the Court in which the conviction was had or by which the order was passed; or if the conviction or order was passed by a Magistrate other than the Magistrate of the District, to the Magistrate of the District.

Order on revision to be certified to lower Court or District Magistrate.

The Court or Magistrate to which the High Court certifies its order shall thereupon make such orders as are conformable to the decision of the High Court, and, if necessary, the record shall be amended in accordance therewith:

Provided that, in any case revised by the High Court under this chapter, the High Court shall not reverse the verdict of a jury, or alter or reverse the sentence or order of the Court below except as herein provided.

Proviso.

300. The provisions of section two hundred and eighty-three shall apply to revision orders under this chapter.

Provisions of section 283 to apply.

PART VII.

EXECUTION.

CHAPTER XXIII.

301. In cases referred by the Court of Session for the confirmation of a sentence by the High Court, the proper officer of the High Court shall without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court, and attested with his official signature, to the Court of Session.

Procedure in cases referred to High Court for confirmation.

Such Court shall, if the sentence be confirmed, issue a warrant to the officer in charge of the jail in which the prisoner is confined, to cause the sentence or order to be carried into execution;

Part VII, C. XXIII, ss. 302—311.

or, in the case of any other orders, shall cause such order to be carried into effect.

Court of Session to send copy of finding and sentence to District Magistrate.

302. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence to the Magistrate of the District in which the trial was held.

Warrant of execution.

If the accused person is sentenced to imprisonment, the Court shall forthwith forward him, with a warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

The warrant shall state the offence of which the accused person has been convicted and the period during which he is to be imprisoned and the nature of the imprisonment.

Procedure after sentence passed by Court inferior to Session Court.

In cases tried by any Court inferior to a Court of Session, the Court passing the sentence shall forthwith forward the accused person, with a similar warrant for the execution of the sentence, to the officer in charge of the jail of the district in which the trial was held.

Form and direction of warrant of commitment.

303. Every warrant for the commitment of a person to custody shall be in writing and signed and sealed by the Judge or Magistrate who issues it, and shall be directed to some jailor or other officer or person having authority to receive and keep prisoners, and shall be in the Form (C or D as the case may be) given in the second schedule to this Act or to the like effect.

Warrant with whom to be lodged.

304. The warrant of commitment shall be lodged with the jailor, if he be in the jail; and if he be not in the jail, with his deputy.

If the jailor has no deputy, the warrant may be lodged with any officer of the jail then being in the jail.

Execution of sentence under section 301 or 302.

305. Upon the receipt of a warrant under section three hundred and one or three hundred and two, the officer in charge of the jail shall cause the sentence to be executed, and shall return the warrant, when the sentence has been fully executed, to the Court from which it issued, with an endorsement under his signature, certifying the manner in which the sentence has been executed.

Postponement of capital sentence on pregnant woman.

306. If a woman sentenced to death be found to be pregnant, the High Court may order the sentence to be postponed, and may commute the sentence.

Levy of fine.

307. Whenever an offender is sentenced to pay a fine, the Court which sentences him may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, whether or not the offence be punishable with fine only, and whether or not the sentence direct that, in default of payment of the fine, the offender shall suffer imprisonment.

Such warrant may be executed within the jurisdiction of the Court that issued it, and it shall authorize the distress and sale of any moveable property belonging to the offender without the jurisdiction of the said Court when endorsed by the Magistrate of the District in which such property is situated.

Payment of fine in compensation.

308. Whenever a Criminal Court imposes a fine, or confirms in appeal or revision a sentence of fine, or a sentence of which fine forms a part, the Court may order the whole or any part of the fine to be paid in compensation,

(1) for expenses properly incurred in the prosecution,

(2) for the offence complained of, where such offence can, in the opinion of the Court, be compensated by money.

Such payment shall be made, as the Court thinks fit, to or for the benefit of the complainant, or the person injured, or both.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

In any subsequent civil proceedings relating to the same matter, the Court shall take into account any sum which may have been awarded under this section.

Imprisonment in default of payment of fine.

309. In every case punishable under any law in force with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, the Criminal Courts shall be guided by the provisions of sections sixty-four and sixty-five of the Indian Penal Code in awarding the period of imprisonment in default of payment of the fine:

Proviso as to cases decided by a Magistrate.

Provided that, in no case decided by a Magistrate, where imprisonment shall have been awarded as part of the substantive sentence, shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which he is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under this Act.

Whipping, if awarded in addition to imprisonment, when to be inflicted.

310. When the punishment of whipping is awarded in addition to imprisonment, by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or, if an appeal be made within that time, until the sentence is confirmed by the superior Court: but the whipping shall be inflicted immediately on the expiry of the fifteen days, or, in case of an appeal, immediately on the receipt of the order of the Court confirming the sentence if such order is not received within the fifteen days.

Mode of inflicting the punishment.

311. In the case of an adult, the punishment of whipping shall be inflicted with such instrument in such mode and on such part of the person as the Local Government directs, and in the case of a juvenile offender, it